



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

SENATE BILL NO. 150

AS ENACTED

MONDAY, MARCH 29, 2010

RECEIVED AND FILED
DATE April 13, 2010
1:37 pm

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adkins

AN ACT relating to business entities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBTITLE 1 OF KRS CHAPTER 271B
IS CREATED TO READ AS FOLLOWS:

Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

➔SECTION 2. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 271B
IS CREATED TO READ AS FOLLOWS:

The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special meeting of the board of directors on the application of one-third (1/3) or more of the incumbent number of directors. The court may fix the time and place of the meeting, prescribe the form and content of the meeting notice, and enter such other orders as are necessary to accomplish the purpose of the meeting.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 272 IS CREATED TO
READ AS FOLLOWS:

(1) A purchaser from an association of its own shares shall not be liable to the association or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(2) Unless otherwise provided in the articles of incorporation, a shareholder or a member of an association shall not be personally liable for the acts or debts of the association, except that he or she may become personally liable by reason of his or her own acts or conduct.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 362 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) A registered limited liability partnership shall not make a distribution to the
 3 extent that at the time of the distribution and after giving effect to the
 4 distribution, all liabilities for the registered limited liability partnership exceed
 5 the fair value of the assets of the registered limited liability partnership, other
 6 than liabilities to partners or transferees on account of their transferable interest
 7 in liabilities for which the recourse of creditors is limited to specified property.
 8 The fair value of property that is subject to a liability for which the recourse of
 9 partners is limited shall be included in the assets of the registered limited liability
 10 partnership only to the extent that the fair value of that property exceeds that
 11 liability.

12 (2) A partner or transferee of a registered limited liability partnership who receives a
 13 distribution in violation of subsection (1) of this section is liable to the
 14 partnership for the amount of that distribution. A proceeding under this section
 15 shall be barred unless it is commenced within two (2) years after the date on
 16 which the distribution is paid to the partner or transferee.

17 (3) This section does not affect any obligation or liability of a partner or transferee of
 18 a registered limited liability partnership under an agreement or other applicable
 19 law for the amount of a distribution.

20 (4) For purposes of this section, the term "distribution" does not include amounts
 21 constituting reasonable compensation for present or past services or reasonable
 22 payments made in the ordinary course of business pursuant to a bona fide
 23 retirement plan or other benefits program.

24 ➔SECTION 5. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
 25 362 IS CREATED TO READ AS FOLLOWS:

26 (1) A limited liability partnership shall not make a distribution to the extent that at
 27 the time of and after giving effect to the distribution, all liabilities of the limited

liability partnership exceed the fair value of the assets of the limited liability partnership, other than liabilities to partners or transferees on account of their transferable interest in liabilities for which the recourse of creditors is limited to specified property. The fair value of property that is subject to a liability for which the recourse of partners is limited shall be included in the assets of the limited liability partnership only to the extent that the fair value of that property exceeds that liability.

(2) A partner or transferee of a limited liability partnership who receives a distribution in violation of subsection (1) of this section is liable to the partnership for the amount of that distribution. A proceeding under this section shall be barred unless it is commenced within two (2) years of the date on which the distribution is paid to the partner or transferee.

(3) This section does not affect any obligation or liability of a partner or transferee of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.

(4) For purposes of this section, the term "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

➔SECTION 6. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

(1) A foreign limited partnership transacting business in this Commonwealth shall not maintain an action or proceeding in this Commonwealth unless it has applied for and received a certificate of authority.

(2) The successor to a foreign limited partnership that transacted business in this Commonwealth without having applied for and received a certificate of authority and the assignee of a cause of action arising out of that business shall not

1 maintain a proceeding based on that cause of action in any court in this
 2 Commonwealth until the foreign limited partnership or its successor has applied
 3 for and received a certificate of authority.

4 (3) A court may stay a proceeding commenced by a foreign limited partnership, its
 5 successor, or assignee, until it determines whether the foreign limited partnership
 6 or its successor is obligated to have received a certificate of authority. If it so
 7 determines, then the court may further stay the proceeding until the limited
 8 partnership or its successor has applied for and received a certificate of authority.

9 (4) The failure of a foreign limited partnership to have in effect a certificate of
 10 authority does not impair the validity of a contract or act of the foreign limited
 11 partnership or preclude it from defending an action or proceeding in this
 12 Commonwealth.

13 (5) A limitation on personal liability of a partner is not waived solely by transacting
 14 business in this Commonwealth without having applied for and received a
 15 certificate of authority.

16 (6) A foreign limited partnership transacting business in this Commonwealth
 17 without filing and having received a certificate of authority shall be deemed to
 18 have appointed the Secretary of State as its agent for service of process with
 19 respect to causes of action arising out of the transaction of business in this
 20 Commonwealth.

21 (7) A foreign limited partnership shall be liable for a civil penalty of two dollars (\$2)
 22 for each day, but not to exceed a total of five hundred dollars (\$500) for each
 23 year, it transacts business in this Commonwealth without having received a
 24 certificate of authority. The Attorney General may collect all penalties due under
 25 this subsection.

26 ➔Section 7. KRS 271B.14-200 is amended to read as follows:

27 The Secretary of State may commence a proceeding under KRS 271B.14-210 to

1 administratively dissolve a corporation if:

- 2 (1) The corporation does not deliver~~[file]~~ its annual report to the Secretary of State on
 3 or before its due date~~[within sixty (60) days after it is due]~~;
- 4 (2) The corporation is without a registered agent or registered office in this state for
 5 sixty (60) days or more;
- 6 (3) The corporation does not notify the Secretary of State within sixty (60) days that its
 7 registered agent or registered office has been changed, that its registered agent has
 8 resigned, or that its registered office has been discontinued; or
- 9 (4) The corporation's period of duration stated in its articles of incorporation expires.

10 ➔Section 8. KRS 271B.14-210 is amended to read as follows:

- 11 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
 12 271B.14-200 for dissolving a corporation, the Secretary of State~~[he]~~ shall serve the
 13 corporation with written notice of the~~[his]~~ determination, by mailing such notice by
 14 first-class mail to the corporation at its principal place of business address, but no
 15 such notice shall be necessary upon the expiration of a corporation's period of
 16 duration.
- 17 (2) If the corporation does not correct each ground for dissolution or demonstrate to the
 18 reasonable satisfaction of the Secretary of State that each ground determined by the
 19 Secretary of State does not exist within sixty (60) days from the date on which the
 20 notice was mailed, the Secretary of State shall administratively dissolve the
 21 corporation by signing a certificate of dissolution that recites the ground or grounds
 22 for dissolution and its effective date. The Secretary of State shall file the original of
 23 the certificate and serve a copy on the corporation by mailing such notice by first-
 24 class mail to the corporation at its principal place of business address.
- 25 (3) A corporation administratively dissolved continues its corporate existence but may
 26 not carry on any business except that necessary to wind up and liquidate its business
 27 and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060

1 and 271B.14-070.

2 (4) The administrative dissolution of a corporation shall not terminate the authority of
3 its registered agent.

4 ➔Section 9. KRS 271B.14-220 is amended to read as follows:

5 (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked
6 under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch.
7 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after
8 the effective date of dissolution or revocation. The application shall:

9 (a) Recite the name of the corporation and the effective date of its administrative
10 dissolution or revocation;

11 (b) State that the ground or grounds for dissolution or revocation either did not
12 exist or have been eliminated;

13 (c) State that the corporation's name satisfies the requirements of KRS 271B.4-
14 010;

15 (d) Contain a certificate from the Department of Revenue reciting that all taxes
16 owed by the corporation have been paid;

17 (e) Contain a certificate from the Division of Unemployment Insurance in the
18 Department for Workforce Investment reciting that all employer contributions,
19 interest, penalties, and service capacity upgrade fund assessments have been
20 paid; and

21 (f) Be accompanied by the reinstatement penalty and the current fee for filing
22 each delinquent annual report provided for in KRS 271B.1-220.

23 (2) If the Secretary of State determines that the application contains the information
24 required by subsection (1) of this section and that the information is correct, the
25 Secretary of State~~he~~ shall cancel the certificate of dissolution or revocation and
26 prepare a certificate of existence that recites the~~his~~ determination and the effective
27 date of reinstatement, file the original of the certificate, and serve a copy on the

1 corporation by mailing the notice by first class mail to the corporation at its
2 principal~~[registered]~~ office.

3 (3) When the reinstatement is effective, it shall relate back to and take effect as of the
4 effective date of the administrative dissolution or revocation and the corporation
5 shall resume carrying on its business as if the administrative dissolution or
6 revocation had never occurred.

7 (4) Notwithstanding any other provision to the contrary, any corporation which was
8 administratively dissolved or revoked and has taken the action necessary to wind up
9 and liquidate its business and affairs under KRS 271B.14-050, and notify claimants
10 under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.

11 (5) A corporation~~[administratively]~~ dissolved upon the expiration of its period of
12 duration may, in the sixty (60) day period of KRS 271B.14-210(2), amend its
13 articles to extend its period of duration or to delete its period of duration, which
14 amendment will relate back to the day immediately preceding the expiration of the
15 period of duration. A corporation which fails to so amend its articles of
16 incorporation in the sixty (60) day period beginning on the date of expiration~~[of~~
17 ~~KRS 271B.14-210(2)]~~ may not thereafter be reinstated, and shall liquidate its
18 business and affairs under KRS 271B.14-050 and notify claimants under KRS
19 271B.14-060 and 271B.14-070.

20 ➔Section 10. KRS 271B.15-300 is amended to read as follows:

21 The Secretary of State may commence a proceeding under KRS 271B.15-310 to revoke
22 the certificate of authority of a foreign corporation authorized to transact business in this
23 state if:

24 (1) The foreign corporation does not deliver~~[file]~~ its annual report to the Secretary of
25 State on or before the due date~~[within sixty (60) days after it is due];~~

26 (2) The foreign corporation is without a registered agent or registered office in this state
27 for sixty (60) days or more;

- 1 (3) The foreign corporation does not inform the Secretary of State under KRS 271B.15-
 2 080 and 271B.15-090 that its registered agent or registered office has changed, that
 3 its registered agent has resigned, or that its registered office has been discontinued
 4 within sixty (60) days of the change, resignation or discontinuance;
- 5 (4) An incorporator, director, officer or agent of the foreign corporation signed a
 6 document he or she knew was false in any material respect with intent that the
 7 document be delivered to the Secretary of State for filing; or
- 8 (5) The Secretary of State receives a duly authenticated certificate from the Secretary of
 9 State or other official having custody of corporate records in the state or country
 10 under whose law the foreign corporation is incorporated stating that it has been
 11 dissolved or disappeared as the result of a merger.
- 12 ➔Section 11. KRS 271B.15-310 is amended to read as follows:
- 13 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
 14 271B.15-300 for revocation of a certificate of authority, the Secretary of State~~he~~
 15 shall serve the foreign corporation with written notice of the~~his~~ determination by
 16 mailing the notice by first class mail to the corporation at its principal~~registered~~
 17 office.
- 18 (2) If the foreign corporation does not correct each ground for revocation or
 19 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
 20 determined by the Secretary of State does not exist within sixty (60) days after the
 21 mailing of the notice, the Secretary of State may revoke the foreign corporation's
 22 certificate of authority by signing a certificate of revocation that recites the ground
 23 or grounds for revocation and its effective date. The Secretary of State shall file the
 24 original of the certificate and serve a copy on the foreign corporation by mailing the
 25 notice by first class mail to the corporation at its principal~~registered~~ office.
- 26 (3) The authority of a foreign corporation to transact business in this state shall cease
 27 on the date shown on the certificate revoking its certificate of authority.

1 (4) The Secretary of State's revocation of a foreign corporation's certificate of authority
 2 shall be considered to appoint the Secretary of State the foreign corporation's agent
 3 for service of process in any proceeding based on a cause of action which arose
 4 during the time the foreign corporation was authorized to transact business in this
 5 state. Service of process on the Secretary of State under this subsection shall be
 6 service on the foreign corporation. Upon receipt of process, the Secretary of State
 7 shall mail a copy of the process to the secretary of the foreign corporation at its
 8 principal office shown in its most recent annual report or in any subsequent
 9 communication received from the corporation stating the current mailing address of
 10 its principal office, or, if none are on file, in its application for a certificate of
 11 authority.

12 (5) Revocation of a foreign corporation's certificate of authority shall not terminate the
 13 authority of the registered agent of the corporation.

14 ➔Section 12. KRS 271B.16-220 is amended to read as follows:

15 (1) Each domestic corporation, and each foreign corporation authorized to transact
 16 business in this state, shall deliver to the Secretary of State for filing an annual
 17 report that sets forth:

18 (a) The name of the corporation and the state or country under whose law it is
 19 incorporated;

20 (b) The address of its registered office and the name of its registered agent at that
 21 office in this state;

22 (c) The address of its principal office;~~and~~

23 (d) The names and business addresses of its directors;

24 **(e) The name and business address of the secretary; and**

25 **(f) The names and business addresses of the other~~and~~ principal officers;**

26 (2) Information in the annual report shall be current as of the date the annual report is
 27 executed on behalf of the corporation.

1 (3) The first annual report shall be delivered to the Secretary of State between January 1
 2 and June 30 of the year following the calendar year in which a domestic corporation
 3 was incorporated or a foreign corporation was authorized to transact business.
 4 Subsequent annual reports shall be delivered to the Secretary of State between
 5 January 1 and June 30 of the following calendar years.

6 (4) If an annual report does not contain the information required by this section, the
 7 Secretary of State shall promptly notify the reporting domestic or foreign
 8 corporation in writing and return the report to it for correction. For purposes of KRS
 9 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to
 10 have been delivered until it is returned and accepted by the Secretary of State.

11 (5) A domestic or foreign corporation may amend the information in its last filed
 12 annual report by delivery to the Secretary of State of an amendment to the annual
 13 report on such form as is provided by the Secretary of State.

14 ➔Section 13. KRS 272.201 is amended to read as follows:

15 (1) When a member of an association established without capital stock has paid
 16 ~~the~~^{his} membership fee in full, the member~~he~~ shall receive notice of such
 17 membership whether by a certificate of membership, letter, or otherwise. Such
 18 membership shall not be transferable except as may be prescribed in the articles of
 19 incorporation and bylaws of the association.

20 (2) No association shall issue capital stock until it has been fully paid for. Promissory
 21 notes may be accepted by an association as full or partial payment. An association
 22 may hold the stock as security for the payment of the note, but retention as security
 23 shall not affect a member's right to vote.

24 ~~(3) [No member, or other person, is liable for the debts of the association to an amount~~
 25 ~~exceeding the sum remaining unpaid on his membership fee or his subscription to~~
 26 ~~the capital stock, including any unpaid balance on any promissory notes given in~~
 27 ~~payment thereof.~~

1 ~~(4)~~ An association, in its bylaws, may limit the amount of voting stock which one (1)
 2 member may own. No member of an association composed solely of producers of
 3 agricultural products shall be allowed to control more than forty-nine percent (49%)
 4 of such association's voting power.

5 ~~(4)~~~~(5)~~ An association, in its bylaws, may provide that no member shall have more
 6 than one (1) vote.

7 ~~(5)~~~~(6)~~ An association organized under KRS 272.101 to 272.341 whose members are
 8 one (1) or more associations may determine by its bylaws the number of votes to
 9 which each member-association is entitled and provide for the appointment or
 10 election of delegates to cast the votes and to represent the member-associations at
 11 all membership meetings.

12 ~~(6)~~~~(7)~~ An association organized with stock may issue preferred stock, with or
 13 without the right to vote. Such stock may be redeemable or retirable by the
 14 association on terms and conditions provided for by the articles of incorporation and
 15 printed on the face of the certificate.

16 ~~(7)~~~~(8)~~ The voting stock of an association shall be transferable only to persons
 17 engaged in the production of agricultural products or to associations of such
 18 persons. Such restrictions must be printed upon every certificate of voting stock.

19 ~~(8)~~~~(9)~~ Except when its debts exceed fifty percent (50%) of its assets, an association
 20 may purchase for cash its capital stock at book value or par value, whichever is less,
 21 and may call such stock for redemption on the same basis pursuant to a plan for
 22 rotating ownership of such stock set forth in its articles of incorporation or in its
 23 bylaws. The determination of book value by the board of directors shall be
 24 incontestable except for fraud.

25 ➔Section 14. KRS 272.490 is amended to read as follows:

26 ~~(1)~~ No member shall be liable for the debts of the association to an amount exceeding
 27 the sum remaining unpaid on the member's~~[his]~~ membership fee, including any

unpaid balance on any promissory notes given in payment thereof.

(2) Subsection (1) of this section shall not affect the liability of a member of an association for his or her own negligence, wrongful acts, or misconduct.

➔Section 15. KRS 273.187 is amended to read as follows:

(1) A corporation may have one (1) or more classes of members or may have no members. If the corporation has one (1) or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

(2) Unless otherwise provided in the articles of incorporation, a director, officer, employee, or member of a corporation shall not be personally liable for the acts or debts of the corporation, except that the member may become personally liable by reason of his or her own acts or conduct~~[The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations].~~

➔Section 16. KRS 273.223 is amended to read as follows:

(1) Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

(2) The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special

1 meeting of the board of directors on the application of one-third (1/3) or more of
 2 the incumbent directors. The court may fix the time and place of the meeting,
 3 prescribe the form and content of the meeting notice, and enter such other orders
 4 as are necessary to accomplish the purpose of the meeting.

5 ➔Section 17. KRS 273.233 is amended to read as follows:

6 Each corporation shall keep correct and complete books and records of account and shall
 7 keep minutes of the proceedings of its members, board of directors and committees
 8 having any of the authority of the board of directors; and shall keep at its registered office
 9 or principal office in this state a record of the names and addresses of its members
 10 entitled to vote. All books and records of a corporation may be inspected and copied by
 11 any member, or the member's[his] agent or attorney, for any proper purpose at any
 12 reasonable time. The member's right of inspection shall not be abolished or limited by
 13 the corporation's articles of incorporation or bylaws.

14 ➔Section 18. KRS 273.318 is amended to read as follows:

15 The Secretary of State may commence a proceeding under KRS 273.3181 to
 16 administratively dissolve a corporation if:

- 17 (1) The corporation does not deliver[file] its annual report to the Secretary of State on
 18 or before the due date[within sixty (60) days after it is due];
- 19 (2) The corporation is without a registered agent or registered office in this state for
 20 sixty (60) days or more;
- 21 (3) The corporation does not notify the Secretary of State within sixty (60) days that its
 22 registered agent or registered office has been changed, that its registered agent has
 23 resigned, or that its registered office has been discontinued; or
- 24 (4) The corporation's period of duration stated in its articles of incorporation expires.

25 ➔Section 19. KRS 273.3181 is amended to read as follows:

- 26 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
 27 273.318 for dissolving a corporation, the Secretary of State[he] shall serve the

1 corporation with written notice of the~~[his]~~ determination, by mailing such notice by
 2 first class mail to the corporation at its principal~~[registered]~~ office, but no such
 3 notice shall be necessary upon the expiration of a corporation's period of
 4 duration.

5 (2) If the corporation does not correct each ground for dissolution or demonstrate to the
 6 reasonable satisfaction of the Secretary of State that each ground determined by the
 7 Secretary of State does not exist within sixty (60) days from the date on which the
 8 notice was mailed, the Secretary of State shall administratively dissolve the
 9 corporation by signing a certificate of dissolution that recites the ground or grounds
 10 for dissolution and its effective date. The Secretary of State shall file the original of
 11 the certificate and serve a copy on the corporation by mailing such notice by first
 12 class mail to the corporation at its principal~~[registered]~~ office.

13 (3) A corporation administratively dissolved shall continue its corporate existence but
 14 may not carry on any business except that necessary to wind up and liquidate its
 15 business and affairs.

16 (4) The administrative dissolution of a corporation shall not terminate the authority of
 17 its registered agent.

18 ➔Section 20. KRS 273.3182 is amended to read as follows:

19 (1) A corporation administratively dissolved under KRS 273.318 or revoked under the
 20 provisions of KRS 273.367, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248,
 21 may apply to the Secretary of State for reinstatement at any time after the effective
 22 date of dissolution or revocation. The application shall:

23 (a) Recite the name of the corporation and the effective date of its administrative
 24 dissolution or revocation;

25 (b) State that the ground or grounds for dissolution or revocation either did not
 26 exist or have been eliminated;

27 (c) State that the corporation's name satisfies the requirements of KRS 273.177;

- 1 (d) Contain a certificate from the Department of Revenue reciting that all taxes
2 owed by the corporation have been paid; and
- 3 (e) Be accompanied by the fee for filing a statement or report provided for in
4 KRS 273.368(1)(j) and the current fee for filing each delinquent annual report
5 provided for in KRS 273.368.
- 6 (2) If the Secretary of State determines that the application contains the information
7 required by subsection (1) of this section and that the information is correct, the
8 Secretary of State~~[he]~~ shall cancel the certificate of dissolution or revocation and
9 prepare a certificate of existence that recites the~~[his]~~ determination and the effective
10 date of reinstatement, file the original of the certificate, and serve a copy on the
11 corporation by mailing the notice by first class mail to the corporation at its
12 principal~~[registered]~~ office.
- 13 (3) When the reinstatement is effective, it shall relate back to and take effect as of the
14 effective date of the administrative dissolution or revocation and the corporation
15 shall resume carrying on its business as if the administrative dissolution or
16 revocation had never occurred.
- 17 (4) A corporation administratively dissolved upon the expiration of its period of
18 duration may, in the sixty (60) day period beginning on the date of expiration,
19 amend its articles to extend its period of duration or to delete its period of
20 duration, which amendment will relate back to the day immediately preceding the
21 expiration of the period of duration. A corporation which fails to so amend its
22 articles of incorporation in that sixty (60) day period may not thereafter be
23 reinstated, and shall liquidate its business and affairs as provided in this chapter.

24 ➔Section 21. KRS 273.3646 is amended to read as follows:

25 The Secretary of State may commence a proceeding under KRS 273.3647 to revoke the
26 certificate of authority of a foreign corporation authorized to transact business in this state
27 if:

- 1 (1) The foreign corporation does not deliver~~[file]~~ its annual report to the Secretary of
2 State on or before the due date~~[within sixty (60) days after it is due]~~;
 - 3 (2) The foreign corporation is without a registered agent or registered office in this state
4 for sixty (60) days or more;
 - 5 (3) The foreign corporation does not inform the Secretary of State under KRS 273.3642
6 or 273.3643 that its registered agent or registered office has changed, that its
7 registered agent has resigned, or that its registered office has been discontinued
8 within sixty (60) days of the change, resignation or discontinuance;
 - 9 (4) An incorporator, director, officer or agent of the foreign corporation signed a
10 document he or she knew was false in any material respect with intent that the
11 document be delivered to the Secretary of State for filing; or
 - 12 (5) The Secretary of State receives a duly authenticated certificate from the Secretary of
13 State or other official having custody of corporate records in the state or country
14 under whose law the foreign corporation is incorporated stating that it has been
15 dissolved or disappeared as the result of a merger.
- 16 ➔Section 22. KRS 273.3647 is amended to read as follows:
- 17 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
18 273.3646 for revocation of a certificate of authority, the Secretary of State~~[he]~~ shall
19 serve the foreign corporation with written notice of the~~[his]~~ determination by
20 mailing the notice by first class mail to the corporation at its principal~~[registered]~~
21 office.
 - 22 (2) If the foreign corporation does not correct each ground for revocation or
23 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
24 determined by the Secretary of State does not exist within sixty (60) days after the
25 mailing of the notice, the Secretary of State may revoke the foreign corporation's
26 certificate of authority by signing a certificate of revocation that recites the ground
27 or grounds for revocation and its effective date. The Secretary of State shall file the

1 original of the certificate and serve a copy on the foreign corporation by mailing the
2 notice by first class mail to the corporation at its principal~~registered~~ office.

3 (3) The authority of a foreign corporation to transact business in this state shall cease
4 on the date shown on the certificate revoking its certificate of authority.

5 (4) The Secretary of State's revocation of a foreign corporation's certificate of authority
6 shall appoint the Secretary of State the foreign corporation's agent for service of
7 process in any proceeding based on a cause of action which arose during the time
8 the foreign corporation was authorized to transact business in this state. Service of
9 process on the Secretary of State under this subsection shall constitute service on
10 the foreign corporation. Upon receipt of process, the Secretary of State shall mail a
11 copy of the process to the secretary of the foreign corporation at its principal office
12 shown in its most recent annual report or in any subsequent communication
13 received from the corporation stating the current mailing address of its principal
14 office, or, if none are on file, in its application for a certificate of authority.

15 (5) Revocation of a foreign corporation's certificate of authority shall not terminate the
16 authority of the registered agent of the corporation.

17 ➔Section 23. KRS 273.3671 is amended to read as follows:

18 (1) Each domestic corporation, and each foreign corporation authorized to transact
19 business in this state, shall deliver to the Secretary of State for filing an annual
20 report that sets forth:

21 (a) The name of the corporation and the state or country under whose law it is
22 incorporated;

23 (b) The address of its registered office and the name of its registered agent at that
24 office in this state;

25 (c) The address of its principal office;~~and~~

26 (d) The names and business addresses of its directors;

27 **(e) The name and business address of the secretary; and**

1 **(f) The names and business addresses of the other**~~[and]~~ principal officers.

2 (2) Information in the annual report shall be current as of the date the annual report is
3 executed on behalf of the corporation.

4 (3) The first annual report shall be delivered to the Secretary of State between January 1
5 and June 30 of the year following the calendar year in which a domestic corporation
6 was incorporated or a foreign corporation was authorized to transact business.
7 Subsequent annual reports shall be delivered to the Secretary of State between
8 January 1 and June 30 of the following calendar years.

9 (4) If an annual report does not contain the information required by this section, the
10 Secretary of State shall promptly notify the reporting domestic or foreign
11 corporation in writing and return the report to it for correction. For purposes of KRS
12 273.2527(2)(d), an annual report returned for correction shall not be deemed to have
13 been delivered until it is returned to and accepted by the Secretary of State.

14 (5) A domestic or foreign corporation may amend the information in its last filed
15 annual report by delivery to the Secretary of State of an amendment to the annual
16 report on such form as is provided by the Secretary of State.

17 ➔Section 24. KRS 274.015 is amended to read as follows:

18 (1) One (1) or more individuals, each of whom is licensed to render the same
19 professional service or who are licensed to render related professional services such
20 that applicable licensing laws and regulations would not prohibit the practice of
21 such multiple professional services through a single business partnership, may
22 incorporate and form a professional service corporation by filing articles of
23 incorporation in the office of the Secretary of State. Such articles of incorporation
24 shall meet the requirements of KRS Chapter 271B, and in addition to the
25 information required by KRS 271B.2-020, such articles shall contain the following:

26 (a) The designation of the profession or professions to be practiced through the
27 professional service corporation;

1 (b) The names and residence addresses of all the original shareholders of the
2 professional service corporation; and

3 (c) A statement by the incorporator or incorporators that each of the
4 incorporators, shareholders, not less than one-half (1/2) of the directors, and
5 each of the officers other than secretary and treasurer is a qualified person
6 within the meaning of this chapter.

7 (2) A professional service corporation formed under the provisions of this chapter,
8 except as this chapter may otherwise provide, shall have the same powers, authority,
9 duties, and liabilities as a corporation formed under, and shall be otherwise
10 governed by, KRS Chapter 271B.

11 (3) A professional service corporation that has ceased to be utilized for rendering a
12 professional service may by amendment of its articles of incorporation delete
13 those provisions otherwise required by subsection (1) of this section and adopt a
14 name conforming to KRS 271B.4-010, whereupon the corporation shall be
15 governed exclusively by KRS Chapter 271B and not this chapter.

16 ➔Section 25. KRS 274.017 is amended to read as follows:

17 (1) A professional service corporation may issue and a shareholder thereof may transfer
18 or pledge shares, fractional shares, and rights or options to purchase shares only to:

19 (a) A natural person[persons] who is[are] authorized by law in this state or in any
20 other state or territory of the United States or the District of Columbia to
21 render a professional service permitted by the articles of incorporation of the
22 corporation;

23 (b) A partnership[Partnerships], domestic or foreign, in which all the partners are
24 qualified persons with respect to such professional corporation and in which at
25 least one (1) partner is authorized by the laws of this state to render a
26 professional service permitted by the articles of incorporation of the
27 corporation;

1 (c) A professional limited liability company, domestic or foreign, authorized by
 2 law in this state to render a professional service permitted by the articles of
 3 organization of the limited liability company and the articles of incorporation
 4 of the corporation; ~~or~~~~and~~

5 (d) A professional service corporation~~corporations~~, domestic or foreign,
 6 authorized by law in this state to render a professional service permitted by the
 7 articles of incorporation of each~~the~~ corporation.

8 (2) Any issuance,~~or~~ transfer, or pledge of shares, fractional shares, or rights or
 9 options to purchase shares in violation of this section shall be void; however,
 10 nothing herein contained shall prohibit the transfer of shares of a professional
 11 corporation by operation of law or court decree.

12 ➔Section 26. KRS 274.055 is amended to read as follows:

13 (1) Except as otherwise provided in this section, KRS 271B.6-220 applies to a
 14 corporation governed by this chapter.

15 (2) The provisions of this chapter shall not alter any law applicable to, or otherwise
 16 affect the fiducial, confidential or ethical relationship between a person rendering
 17 professional services and a person receiving such services. The corporation shall be
 18 jointly and severally liable, with the tortfeasor, to the full value of its assets for any
 19 negligent or wrongful acts or actionable misconduct committed by any of its
 20 officers, shareholders, agents or employees while they are engaged on behalf of the
 21 corporation in the rendering of professional service; provided, however, that no
 22 shareholder, director, officer or employee of a professional service corporation shall
 23 be personally liable for the negligence, wrongful acts, or actionable misconduct of
 24 any other shareholder, director, officer, agent or employee nor shall such
 25 shareholder, director, officer or employee be personally liable for the contractual
 26 obligations of the corporation.

27 (3) Notwithstanding any contrary provisions of law, a corporation organized under this

chapter may charge and collect fees for the professional services of its officers, directors, agents or employees, and may compensate those who render such professional services.

~~(4)(2)~~ **Notwithstanding KRS 271B.15-050(3),** any foreign professional service corporation granted a certificate of authority to conduct business within this state **and those persons rendering professional services through it** shall be subject to ~~the liability levels imposed by~~ this section.

➔Section 27. KRS 274.245 is amended to read as follows:

~~{(1)}~~ A foreign professional service corporation shall be entitled to procure a certificate of authority to transact business in this state only if:

~~(1)(a)~~ The name of the corporation meets the requirements of this chapter;

~~(2)(b)~~ The corporation is organized only for purposes for which a professional service corporation organized under this chapter may be organized; and

~~(3)(c)~~ All the shareholders, not less than one half (1/2) of the directors, and all the officers other than the secretary and treasurer of the corporation ~~would be~~ **were it incorporated in this state.**

~~{(2)}~~ ~~No foreign professional service corporation shall be required to obtain a certificate of authority to transact business in this state unless it shall maintain an office in this state for the conduct of business or professional practice.}~~

➔Section 28. KRS 275.003 is amended to read as follows:

(1) It shall be the policy of the General Assembly through this chapter to give maximum effect to the principles of freedom of contract and the enforceability of operating agreements. Unless displaced by particular provisions of this chapter, the principles of law and equity shall supplement this chapter. Although this chapter is in derogation of common law, the rules of construction that require strict construction of statutes which are in derogation of common law shall not apply to its provisions. This chapter shall not be construed to impair the obligations of any

contract existing when this chapter, or any amendment of it, becomes effective, nor to affect any action or proceeding begun or right accrued before the chapter or amendment takes effect.

(2) A written operating agreement may provide that the limited liability company interest of any member who fails to make any contribution that the member is obligated to make or who otherwise violates an obligation undertaken in the operating agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in the limited liability company, subordinating the member's interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of his or her limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of his or her limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

(3) A written operating agreement may provide rights to any person, including a person who is not a member or not otherwise a party to the operating agreement, to the extent set forth therein.

(4) Except to the extent set forth in a written operating agreement, a limited liability company is bound by and a party to the operating agreement.

(5) Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

(6) No member or other person shall have a vested property right resulting from any provision of the operating agreement which may not be modified by its

1 amendment or as otherwise permitted by law.

2 (7) Each member and manager and any other party to an operating agreement shall
 3 discharge all duties and exercise all rights consistently with the obligation of
 4 good faith and fair dealing. The obligation of good faith and fair dealing may not
 5 be eliminated in the operating agreement, but it may prescribe the standards by
 6 which the performance of the obligation are to be measured provided the
 7 standards are not manifestly unreasonable.

8 ➔Section 29. KRS 275.030 is amended to read as follows:

9 (1) A limited liability company shall amend its articles of organization to add or change
 10 a provision that is required by this chapter to be included in the articles of
 11 organization. A limited liability company may amend its articles of organization to
 12 add, change, or delete a provision that is permitted to be or that is not required to be
 13 in the articles of organization. The articles of organization shall be amended if:

- 14 (a) There is a change in the name of the limited liability company;
- 15 (b) There is a change in the latest date upon which the limited liability company is
 16 to dissolve;
- 17 (c) There is a change in whether the management of the limited liability company
 18 is vested in managers or members; or
- 19 (d) There is a change in any other matter required to be set forth in the articles of
 20 organization under KRS 275.025.

21 Amendment of the articles of organization to change the mailing address of the
 22 principal office of the limited liability company shall be done as provided in KRS
 23 275.040, and change the registered office or the registered agent shall be done as
 24 provided in KRS 275.120.

25 (2) Except as provided in subsection (3) of this section, or unless the articles of
 26 organization or the operating agreement provide otherwise, an amendment to the
 27 articles of organization of a limited liability company shall be approved by the

1 members in accordance with KRS 275.175.

2 (3) Unless the articles of organization or the written operating agreement provide
3 otherwise, a manager or, if there is no manager, any member may amend the articles
4 of organization of the limited liability company without action by the members to
5 delete:

6 (a) The name and address of the initial registered agent or initial registered office
7 if a statement of change pursuant to KRS 275.120 is on file with the Secretary
8 of State; or

9 (b) The mailing address of the initial principal office, if a statement of change
10 pursuant to KRS 275.040 is on file with the Secretary of State.

11 (4) To amend its articles of organization, a limited liability company shall file with the
12 Secretary of State articles of amendment setting forth:

13 (a) The name of the limited liability company;

14 (b) The text of each amendment adopted;

15 (c) The date of each amendment's adoption; and

16 (d) A statement that the amendment was duly adopted by the managers or the
17 members in accordance with the articles of organization, the operating
18 agreement of the limited liability company, or this chapter.

19 (5) The articles of organization may be amended in any respect as may be desired, if the
20 articles of organization as amended contain only provisions that may be lawfully
21 contained in articles of organization at the time of making the amendment.

22 (6) Unless the articles of organization provide otherwise, no member of a limited
23 liability company shall have the right to dissent from an amendment to the articles
24 of organization.

25 **(7) A professional limited liability company that has ceased to be utilized for**
26 **rendering a professional service may by amendment of its articles of organization**
27 **delete the provisions required by KRS 275.025(3) and adopt a name conforming**

1 to Section 30 of this Act, whereupon the limited liability company shall no longer
 2 be a professional limited liability company.

3 ➔Section 30. KRS 275.100 is amended to read as follows:

4 (1) The name of each limited liability company as set forth in its articles of
 5 organization shall contain the words "limited liability company" or "limited
 6 company" or the abbreviations "LLC" or "LC." The name of each limited liability
 7 company which is a professional limited liability company shall contain the words
 8 "professional limited liability company" or "professional limited company" or the
 9 abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd.,"
 10 and the word "Company" may be abbreviated as "Co."

11 (2) Except as authorized by subsections (3) and (4) of this section, the name of a
 12 limited liability company shall be distinguishable from any name ~~of~~~~on~~ record with
 13 the Secretary of State.

14 (3) A limited liability company may apply to the Secretary of State for authorization to
 15 use a name that is not distinguishable upon the Secretary of State's records from one
 16 (1) or more of the names described in subsection (2) of this section. The Secretary
 17 of State shall authorize use of the name applied for if:

18 (a) The other business entity consents to the use in writing and submits an
 19 undertaking in form satisfactory to the Secretary of State to change its name to
 20 a name that is distinguishable upon the records of the Secretary of State from
 21 the name of the applying limited liability company; or

22 (b) The applicant delivers to the Secretary of State a certified copy of the final
 23 judgment of a court of competent jurisdiction establishing the applicant's right
 24 to use the name applied for in this Commonwealth.

25 (4) A limited liability company may use the name, including the fictitious name, with
 26 any modification required by this section or KRS 275.410 of another business entity
 27 that is used in this Commonwealth if the other business entity is organized or

1 authorized to transact business in this Commonwealth and the limited liability
2 company:

- 3 (a) Has merged with the other business entity;
- 4 (b) Has been formed by reorganization of the other business entity; or
- 5 (c) Has acquired all or substantially all of the assets, including the business name,
6 of the other business entity.

7 (5) This chapter shall not control the use of assumed names.

8 (6) The filing of articles of organization under the particular name of the limited
9 liability company shall not automatically prevent the use of that name or protect that
10 name from use by other persons.

11 ➔Section 31. KRS 275.150 is amended to read as follows:

- 12 (1) Except as provided in subsection (2) of this section or as otherwise specifically set
13 forth in other sections in this chapter, no member, manager, employee, or agent of a
14 limited liability company, including a professional limited liability company, shall
15 be personally liable by reason of being a member, manager, employee, or agent of
16 the limited liability company, under a judgment, decree, or order of a court, agency,
17 or tribunal of any type, or in any other manner, in this or any other state, or on any
18 other basis, for a debt, obligation, or liability of the limited liability company,
19 whether arising in contract, tort, or otherwise. The status of a person as a member,
20 manager, employee, or agent of a limited liability company, including a professional
21 limited liability company, shall not subject the person to personal liability for the
22 acts or omissions, including any negligence, wrongful act, or actionable misconduct,
23 of any other member, manager, agent, or employee of the limited liability company.
- 24 (2) Notwithstanding the provisions of subsection (1) of this section, under a written
25 operating agreement or under another written agreement, a member or manager may
26 agree to be obligated personally for any of the debts, obligations, and liabilities of
27 the limited liability company.

(3) Subsection (1) of this section shall not affect the liability of a member, manager, employee, or agent of a limited liability company for his or her own negligence, wrongful acts, or misconduct.

➔Section 32. KRS 275.170 is amended to read as follows:

Unless otherwise provided in a written operating agreement:

(1) **With respect to any claim for breach of the duty of care,** a member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.

(2) **The duty of loyalty applicable to** each member and manager shall **be to** account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, or a majority-in-interest of the members from:

(a) Any transaction connected with the conduct or winding up of the limited liability company; or

(b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his **or her** status as manager or member.

(3) In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, shall not be counted in a vote of the members to determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written

1 operating agreement, exists to consider whether to consent.

2 (4) A member of a limited liability company in which management is vested in
3 managers under KRS 275.165(2) and who is not a manager shall have no duties to
4 the limited liability company or the other members solely by reason of acting in his
5 or her capacity as a member.

6 ➔Section 33. KRS 275.220 is amended to read as follows:

7 Unless otherwise provided in a written operating agreement:

8 (1) A member, regardless of the nature of the member's contribution, shall not have a
9 right to demand and receive any distribution from the limited liability company in
10 any form other than cash;~~[-and]~~

11 (2) A member shall not be compelled to accept from a limited liability company a
12 distribution of any asset in kind to the extent that the percentage of the asset
13 distributed to the member exceeds the percentage that the member would have
14 shared in a cash distribution equal to the value of the property at the time of
15 distribution; and

16 (3) The property of a limited liability company shall not be subject to KRS
17 381.135(1)(a)1..

18 ➔Section 34. KRS 275.225 is amended to read as follows:

19 (1) No distribution shall be made if, after giving effect to the distribution:

20 (a) The limited liability company would not be able to pay its debts as they
21 become due in the usual course of business;~~[-or]~~

22 (b) The limited liability company's assets would be less than the sum of its
23 liabilities plus, unless otherwise provided in an operating agreement, the
24 amount that would be needed, if the limited liability company were to be
25 dissolved at the time of the distribution, to satisfy the preferential rights of
26 other members upon dissolution which are superior to the rights of the
27 member receiving the distribution; or

1 **(c) The distribution violates the operating agreement.**

2 (2) The~~[limited liability company may base a]~~ determination that a distribution is not
3 prohibited under subsection (1) of this section **may be based upon**~~[either on]:~~

4 (a) Financial statements prepared on the basis of accounting practices and
5 principles that are reasonable under the circumstances; or

6 (b) A fair valuation or other method that is reasonable under the circumstances.

7 (3) Except as provided in subsection (5) of this section, the effect of a distribution
8 under subsection (1) of this section shall be measured as of:

9 (a) The date the distribution is authorized if the payment occurs within one
10 hundred twenty (120) days after the date of authorization; or

11 (b) The date payment is made if it occurs more than one hundred twenty (120)
12 days after the date of authorization.

13 (4) A limited liability company's indebtedness to a member incurred by reason of a
14 distribution made in accordance with this section shall be at parity with the limited
15 liability company's indebtedness to its general unsecured creditors, except to the
16 extent subordinated by agreement.

17 (5) If terms of the indebtedness provide that payment of principal and interest is to be
18 made only if, and to the extent that, payment of a distribution to members could
19 then be made under this section, then indebtedness of a limited liability company,
20 including indebtedness issued as a distribution, shall not be a liability for purposes
21 of determinations made under subsection (1) of this section.

22 (6) If the indebtedness is issued as a distribution, then each payment of principal or
23 interest on the indebtedness shall be treated as a distribution, the effect of which
24 shall be measured on the date the payment is actually made.

25 (7) For purposes of this section, the term "distribution" shall not include amounts
26 constituting reasonable compensation for present or past services or reasonable
27 payments made in the ordinary course of business pursuant to a bona fide retirement

1 plan or other benefit program.

2 ➔Section 35. KRS 275.260 is amended to read as follows:

- 3 (1) This section provides the exclusive remedy by which the judgment creditor of a
4 member or the assignee of a member may satisfy a judgment out of the judgment
5 debtor's limited liability company interest.
- 6 (2) On application to a court of competent jurisdiction by a judgment creditor of a
7 member or a member's assignee, a court may charge the judgment debtor's interest
8 in the limited liability company with payment of the unsatisfied amount of the
9 judgment. To the extent so charged, the judgment creditor has only the rights of
10 an[a] assignee and shall have no right to participate in the management or to cause
11 the dissolution of the limited liability company. The court may appoint a receiver of
12 the share of the distributions due or to become due to the judgment debtor in respect
13 of the limited liability company interest and make all other orders, directions,
14 accounts, and inquiries the judgment creditor might have made or which the
15 circumstances of the case may require to give effect to the charging order.
- 16 (3) A charging order constitutes a lien on and the right to receive distributions made
17 with respect to the judgment debtor's limited liability company interest. A charging
18 order does not of itself constitute an assignment of the limited liability company
19 interest.
- 20 (4) The court may order a foreclosure upon the limited liability company interest
21 subject to the charging order at any time. The purchaser of the ***limited*** liability
22 company interest at the foreclosure sale has the rights of an[a] assignee. At any time
23 before foreclosure, the charged limited liability company interest may be redeemed:
24 (a) By the judgment debtor;
25 (b) With property other than limited liability company property, by one (1) or
26 more of the other members; and
27 (c) With limited liability company property, by the limited liability company with

1 the consent of all members whose interest are not so charged.

2 (5) This section does not deprive a member or a member's assignee~~[transferee]~~ of the
3 benefit of any exemption laws applicable to the member's or
4 assignee's~~[transferee's]~~ limited liability company interest.

5 **(6) The limited liability company is not a necessary party to an application for a**
6 **charging order. Service of the charging order on a limited liability company may**
7 **be made by the court granting the charging order or as the court should**
8 **otherwise direct.**

9 ➔Section 36. KRS 275.265 is amended to read as follows:

10 (1) Unless otherwise provided in a written operating agreement, an assignee of a
11 limited liability company interest shall become a member only if a majority-in-
12 interest of the members consent. The consent of a member may be evidenced in any
13 manner specified in writing in an operating agreement, but in the absence of
14 specification, consent shall be evidenced by one (1) or more written instruments,
15 dated and signed by the requisite members. **Except as otherwise provided in a**
16 **written operating agreement, the assignor of a limited liability company interest**
17 **shall not participate in the vote, approval, or consent of the admission of the**
18 **assignee as a member.**

19 (2) An assignee who becomes a member shall have, to the extent assigned, the rights
20 and powers and shall be subject to the restrictions and liabilities of a member under
21 the articles of organization, any written operating agreement, and this chapter. An
22 assignee who becomes a member also shall be liable for any obligations of his or
23 her assignor to make contributions under KRS 275.200. However, the assignee
24 shall not be obligated for liabilities of which the assignee had no knowledge at the
25 time he or she became a member and which could not be ascertained from the
26 articles of organization or any written operating agreement.

27 (3) Unless otherwise provided in a written operating agreement, the assignor shall not

1 be released from his or her liability to the limited liability company under KRS
 2 275.200, whether or not an assignee of a limited liability company interest becomes
 3 a member.

4 (4) Unless otherwise provided in a written operating agreement, a member who assigns
 5 his or her entire limited liability company interest shall cease to be a member or to
 6 have the power to exercise any rights of the member when the assignee becomes a
 7 member with respect to the entire assigned interest.

8 (5) Unless otherwise set forth in the operating agreement, a successor in interest to a
 9 member who is disassociated from the limited liability company shall have the
 10 rights and obligations of an assignee with respect to the member's interest.

11 ➔Section 37. KRS 275.280 is amended to read as follows:

12 (1) A person shall disassociate from~~[- the limited liability company]~~ and cease to be a
 13 member of a limited liability company upon the occurrence of one (1) or more of
 14 the following events:

15 (a) Subject to the provisions of subsection (3) of this section, the member
 16 withdraws by voluntary act from the limited liability company;

17 (b) The member ceases to be a member of the limited liability company as
 18 provided in KRS 275.265;

19 (c) The member is removed as a member:

20 1. In accordance with a written operating agreement;~~[- or]~~

21 2. Unless otherwise provided in a written operating agreement, when the
 22 member assigns all of the member's interest in the limited liability
 23 company, upon receipt of the written consent of a majority-in-interest of
 24 the members who have not assigned their interest; or

25 **3. Upon resignation as a member;**

26 (d) Unless otherwise provided in a written operating agreement or by written
 27 consent of majority-in-interest of the members, at the time the member:

1. Makes an assignment for the benefit of creditors;
 2. Files a voluntary petition in bankruptcy;
 3. Is adjudicated bankrupt or insolvent;
 4. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
 5. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or
 6. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's property;
- (e) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member, or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;
- (f) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is an individual:
1. The member's death; or

- 1 2. The entry of an order by a court of competent jurisdiction adjudicating
2 the member incompetent to manage his or her person or estate;
- 3 (g) Unless otherwise provided in a written operating agreement or by written
4 consent of a majority-in-interest of the members remaining at the time, in the
5 case of a member that is a trust or is acting as a member by virtue of being a
6 trustee of a trust, the termination of the trust, but not merely the substitution of
7 a new trustee;
- 8 (h) Unless otherwise provided in a written operating agreement or by written
9 consent of a majority-in-interest of the members remaining at the time, in the
10 case of a member that is a separate limited liability company, the dissolution
11 and commencement of winding up of the separate limited liability company;
- 12 (i) Unless otherwise provided in a written operating agreement or by written
13 consent of the majority-in-interest of the members remaining at the time, in
14 the case of a member that is a corporation, the filing of articles of dissolution
15 or the equivalent for the corporation or the revocation of its articles of
16 incorporation and the lapse of ninety (90) days after notice to the corporation
17 of revocation without a reinstatement of its articles of incorporation; or
- 18 (j) Unless otherwise provided in a written operating agreement or by written
19 consent of a majority-in-interest of the members remaining at the time, in the
20 case of an estate, the distribution by the fiduciary of the estate's entire interest
21 in the limited liability company.
- 22 (2) The members may provide in a written operating agreement for other events the
23 occurrence of which shall result in a person ceasing to be a member of the limited
24 liability company.
- 25 (3) Unless otherwise provided in a written operating agreement:
- 26 (a) In a member-managed limited liability company a member may resign from
27 a limited liability company upon thirty (30) days' prior written notice to the

1 limited liability company; and

2 (b) In a manager-managed limited liability company, a member may not resign
 3 without the consent of all other members~~[, a member has no right to~~
 4 ~~withdraw from a limited liability company. If the written operating agreement~~
 5 ~~does not specify a time a member may withdraw, a member shall not~~
 6 ~~withdraw without the consent of all other members remaining at the time].~~

7 (4) Upon the effective date of the resignation, the resigning member shall be
 8 dissociated from and cease to be a member of the limited liability company and
 9 shall be with respect to the resigning member's limited liability company interest
 10 an assignee thereof.

11 (5) The successor-in-interest of a disassociated member shall be an assignee.

12 ➔Section 38. KRS 275.295 is amended to read as follows:

13 (1) The Secretary of State may commence a proceeding to administratively dissolve a
 14 limited liability company if:

15 (a) The limited liability company does not deliver its annual report to the
 16 Secretary of State within sixty (60) days on or before the due date~~[after the~~
 17 ~~annual report is due]~~;

18 (b) The limited liability company is without a registered agent or registered office
 19 in Kentucky for at least sixty (60) days;

20 (c) The limited liability company does not notify the Secretary of State within
 21 sixty (60) days after its registered agent or registered office has been changed,
 22 its registered agent has resigned, or its registered office has been discontinued;
 23 or

24 (d) The limited liability company's term as set forth in its articles of organization
 25 expires.

26 (2) (a) If the Secretary of State determines that one (1) or more grounds exist under
 27 subsection (1) of this section for dissolving a limited liability company, the

Secretary of State shall serve the limited liability company with written notice of the determination by first-class mail at its principal place of business address, but no such notice shall be necessary upon the expiration of a limited liability company's term.

(b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company by mailing the notice by first-class mail to the limited liability company at its principal place of business address. If a limited liability company is dissolved for having reached the end of its period of duration, and it does not within sixty (60) days of the end of its duration amend the articles of organization to extend its duration, the certificate of dissolution shall be effective as of the end of the period of duration as set forth in the articles of organization.

(3) (a) A limited liability company administratively dissolved under subsection (2) of this section, other than for failure to amend the articles of organization to extend the duration of the limited liability company within sixty (60) days of the expiration of its term, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:

1. State the name of the limited liability company and the effective date of its administrative dissolution;
2. State that the ground or grounds for dissolution either did not exist or have been eliminated;

- 1 3. State that the limited liability company's name satisfies the requirements
- 2 under KRS 275.100;
- 3 4. Contain a certificate from the Kentucky Department of Revenue stating
- 4 that all taxes owed by the limited liability company have been paid; and
- 5 5. Be accompanied by the reinstatement penalty and the current fee on
- 6 filing each delinquent report as provided for in KRS 275.055(1).

7 (b) If the Secretary of State determines that the application contains the
 8 information required by paragraph (a) of this subsection and that the
 9 information is correct, the Secretary of State shall:

- 10 1. Cancel the certificate of dissolution and prepare a certificate of existence
- 11 that states the determination and the effective date of existence; and
- 12 2. Serve a copy on the limited liability company in the manner provided in
- 13 subsection (2)(a) of this section.

14 (c) When the reinstatement is effective, the reinstatement shall relate back to and
 15 take effect as of the effective date of the administrative dissolution, and the
 16 limited liability company shall resume carrying on business as if the
 17 administrative dissolution had never occurred.

18 (4) (a) If the Secretary of State denies a limited liability company's application for
 19 reinstatement following administrative dissolution, the Secretary of State shall
 20 serve the limited liability company with a written notice that explains the
 21 reason or reasons for denial by mailing notice by first-class mail to the limited
 22 liability company at its ~~registered office or, if none, to the last~~ principal
 23 place of business address~~[office identified on the most recent annual report,~~
 24 ~~or, if none, the articles of organization].~~

25 (b) The limited liability company may appeal the denial of reinstatement to the
 26 Circuit Court of the county where the limited liability company's principal
 27 office, or, if there is none in Kentucky, its registered office, is located within

thirty (30) days after service of the notice of denial by doing the following:

1. Filing a petition with the court to set aside the dissolution; and
2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as are other civil proceedings.

➔Section 39. KRS 275.300 is amended to read as follows:

(1) Except as~~[Unless]~~ otherwise provided in a written operating agreement [-

~~(1) —~~]the business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority pursuant to KRS 275.165 to manage the limited liability company prior to dissolution; or

(b) If one (1) or more of the members or managers have engaged in wrongful conduct, or upon other cause shown, by the Circuit Court for the county in which the principal office of the limited liability company is located or in which the registered office of the limited liability company is located, on application of any member, any member's legal representative, or assignee.

(2) A dissolved limited liability company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its members;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its members **and assignees in proportion to their rights to share therein**~~[according to their interests]~~; and

(e) Doing every other act necessary to wind up and liquidate its business and

affairs.

(3) Except as otherwise provided in a written operating agreement, dissolution of a limited liability company shall not:

- (a) Transfer title to the limited liability company's property;
- (b) Prevent transfer of a limited liability company interest, although the authorization to dissolve may provide for the limited liability company restricting the transfer of the limited liability company's interest;
- (c) Subject its members or managers to standards of conduct different from those prescribed herein;
- (d) Amend the operating agreement or otherwise change quorum or voting requirements for its members or managers, ~~change~~ provisions for selection, resignation, or removal of its members or managers, or ~~or change~~ provisions for amending ~~the~~^{its} operating agreement, or terminate contribution obligations.~~;~~

(4) Dissolution of a limited liability company shall not:

- ~~(a)~~^(e) Prevent commencement of a proceeding by or against the limited liability company in its name;
- ~~(b)~~^(f) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
- ~~(c)~~^(g) Terminate the authority of the registered agent of the limited liability company;
- ~~(d)~~^(h) Alter the obligations and responsibilities of the limited liability company as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
- ~~(e)~~⁽ⁱ⁾ Abate or suspend KRS 275.150(1).

➔ Section 40. KRS 275.310 is amended to read as follows:

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) **First**, payment~~[,]~~ or adequate provisions for payment~~[,]~~ shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;
- (2) **Second**, unless otherwise provided in a written operating agreement, to members **and assignees**~~[or former members]~~ in satisfaction of liabilities for distributions under KRS 275.210; and
- (3) **Third**, unless otherwise provided in a written operating agreement, to members and **assignees**~~[former members first]~~ for the return of their contributions; and
- (4) **Fourth, unless otherwise provided in a written operating agreement, to members and assignees**~~[second]~~ in proportion to **their**~~[the members']~~ respective rights to share in distributions from the limited liability company prior to dissolution.

➔Section 41. KRS 275.360 is amended to read as follows:

- (1) The business entity surviving from the merger shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent business entity setting forth:
 - (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;
 - (b) The plan of merger;
 - (c) The name of the surviving business entity;
 - (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with KRS 275.350; and
 - (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business

1 entity party to the merger that was organized under the laws of this
 2 Commonwealth, as well as for enforcement of any obligation of the
 3 surviving business entity arising from the merger; and

4 2. Appoints the Secretary of State as its agent for service of process in any
 5 such proceeding. The surviving entity shall specify the address to which
 6 a copy of the process shall be mailed to it by the Secretary of State.

7 (2) A merger shall take effect upon the later of the effective date of the filing of the
 8 articles of merger or the date set forth in the articles of merger.

9 (3) The articles of merger shall be executed by a limited liability company that is a
 10 party to the merger in the manner provided for in KRS 275.045 and shall be filed
 11 with the Secretary of State in the manner provided for in KRS 275.045.

12 (4) A plan of merger approved in accordance with KRS 275.350 may effect any
 13 amendment to an operating agreement for a limited liability company if it is the
 14 surviving company in the merger. An approved plan of merger may also provide
 15 that the operating agreement of any constituent limited liability company to the
 16 merger, including a limited liability company formed for the purpose of
 17 consummating a merger, shall be the operating agreement of the limited liability
 18 company that is the surviving business entity. Any amendment to an operating
 19 agreement or adoption of a new operating agreement made pursuant to this
 20 subsection shall be effective at the effective time and~~or~~ date of the merger. The
 21 provisions of this subsection shall not be construed to limit the accomplishment of a
 22 merger or of any of the matters referred to in this section by any other means
 23 provided for in an operating agreement or other agreement or as otherwise permitted
 24 by law.

25 ➔Section 42. KRS 275.365 is amended to read as follows:

26 A merger shall have the following effects:

27 (1) The constituent business entities that are parties to the merger shall be a single

1 entity, which shall be the entity designated in the plan of merger as the surviving
2 business entity.

3 (2) Each party to the merger, except the surviving business entity, shall cease to exist.

4 (3) The surviving business entity shall possess all the rights, privileges, immunities, and
5 powers of each constituent business entity and shall be subject to all the restrictions,
6 disabilities, and duties of each of the constituent entities to the extent the rights,
7 privileges, immunities, powers, restrictions, disabilities, and duties are applicable to
8 the type of business entity that is the surviving business entity.

9 (4) All property, real, personal, and mixed, and all debts due on whatever account,
10 including promises to make capital contributions and subscriptions for shares, and
11 all other choses~~choices~~ in action, and all and every other interest of, belonging to,
12 or due to each of the constituent business entities shall be vested in the surviving
13 business entity without further act or deed.

14 (5) The title to all real estate and any interest therein, vested in any constituent business
15 entity shall not revert or be in any way impaired by reason of the merger.

16 (6) The surviving entity shall thenceforth be liable for all liabilities and obligations of
17 each of the constituent business entities merged, and any claim existing or action or
18 proceeding pending by or against any constituent business entity may be prosecuted
19 as if the merger had not taken place, or the surviving business entity may be
20 substituted in the action.

21 (7) Neither the rights of creditors nor any liens on the property of any constituent
22 business entity shall be impaired by the merger.

23 (8) The interests in a limited liability company or other business entities that are to be
24 converted or exchanged into interests, other securities, cash, obligations, or other
25 property under the terms of the plan of merger are so converted and the former
26 holders thereof are entitled only to the rights provided in the plan of merger or the
27 rights otherwise provided by law.

1 (9) A partner or, in the case of a limited partnership, a general partner who becomes a
 2 member of a limited liability company as a result of a merger, as the case may be,
 3 shall remain liable as a partner or general partner for an obligation incurred by the
 4 partnership or limited partnership before the merger takes effect. The partner's or
 5 general partner's liability for all other obligations of the limited liability company
 6 incurred after the merger takes effect shall be that of a member as provided in this
 7 chapter. A limited partner who becomes a member as a result of a merger shall
 8 remain liable only as a limited partner for an obligation incurred by the limited
 9 partnership before the merger takes effect.

10 (10) If the surviving business entity is a limited liability company, such amendments
 11 to the articles of organization and the operating agreement thereof set forth in
 12 the plan of merger or the articles of merger, subject to KRS 275.200, shall be
 13 effective.

14 (11) If the surviving business entity is a limited liability company, the written
 15 operating agreement provided for in the plan of merger, if any, shall be binding
 16 upon each member in that limited liability company, but any provision thereof
 17 obligating a member to make a contribution to the limited liability company is
 18 subject to KRS 275.200.

19 ➔Section 43. KRS 275.370 is amended to read as follows:

20 (1) A partnership or limited partnership may be converted to a limited liability company
 21 pursuant to this section.

22 (2) The terms and conditions of a conversion of a partnership or limited partnership to a
 23 limited liability company shall, in the case of a partnership, be approved by all the
 24 partners or by a number or percentage specified for conversion in the partnership
 25 agreement or, in the case of a limited partnership, by all the partners,
 26 notwithstanding any provision to the contrary in the limited partnership agreement.

27 (3) After the conversion is approved under subsection (2) of this section, the

- 1 partnership or limited partnership shall file articles of organization with the office of
 2 the Secretary of State which satisfy the requirements of KRS 275.025 and include:
- 3 (a) A statement that the partnership or limited partnership was converted to a
 4 limited liability company from a partnership or limited partnership, as the case
 5 may be;
 - 6 (b) Its former name;
 - 7 (c) In the case of a partnership, a statement of the number of votes cast by the
 8 partners entitled to vote for and against the conversion and, if the vote is less
 9 than unanimous, the number or percentage required to approve the conversion
 10 under the partnership agreement; and
 - 11 (d) If the converting partnership has filed a statement of registration as a limited
 12 liability partnership in accordance with KRS 362.555~~1-01~~ a statement of
 13 qualification in accordance with KRS 362.1-1001, or a statement of
 14 partnership authority, each shall be deemed canceled as of the effective date
 15 and time of the articles of organization as determined in accordance with KRS
 16 275.020; and
 - 17 (e) In the case of a limited partnership, the converting limited partnership's
 18 certificate of limited partnership shall be deemed canceled as of the effective
 19 date and time of the articles of organization as determined in accordance with
 20 KRS 275.020.
- 21 (4) The conversion shall take effect when the articles of organization are filed with the
 22 office of the Secretary of State or, as provided in KRS 275.020, at a later date
 23 specified in the articles of organization.
- 24 (5) A partner or, in the case of a limited partnership, a general partner who becomes a
 25 member of a limited liability company as a result of a conversion shall remain liable
 26 as a partner or general partner for an obligation incurred by the partnership or
 27 limited partnership before the conversion takes effect. If the other party to a

1 transaction with the limited liability company reasonably believes when entering the
2 transaction that the member undertaking the transaction is a partner in a partnership
3 or a general partner in a limited partnership, the member shall be liable for an
4 obligation incurred by the limited liability company within ninety (90) days after the
5 conversion takes effect. The partner's or general partner's liability for all other
6 obligations of the limited liability company incurred after the conversion takes
7 effect shall be that of a member as provided in this chapter. A limited partner who
8 becomes a member as a result of a conversion shall remain liable only as a limited
9 partner for an obligation incurred by the limited partnership before the conversion
10 takes effect.

11 ➔Section 44. KRS 275.376 is amended to read as follows:

- 12 (1) A corporation may be converted to a limited liability company pursuant to this
13 section.
- 14 (2) The terms and conditions of the conversion of a corporation to a limited liability
15 company shall be set forth in a written plan of conversion and approved by the
16 board of directors and by the shareholders of the corporation.
- 17 (3) The plan of conversion shall set forth:
 - 18 (a) The name of the corporation planning to convert;
 - 19 (b) The terms and conditions of the conversion, including the articles of
20 organization and the written operating agreement, if any, of the limited
21 liability company into which the corporation will convert; and
 - 22 (c) The manner and basis of converting the shares of the corporation into
23 membership interests, obligations, or other securities of the limited liability
24 company or into cash or other property in whole or part.
- 25 (4) The plan of conversion may set forth any other provision relating to the conversion.
- 26 (5) For a plan of conversion to be approved:
 - 27 (a) The board of directors shall recommend the plan of conversion to the

1 shareholders, unless the board of directors determines that, because of conflict
2 of interest or other special circumstances, it should make no recommendation
3 and communicates the basis for its determination to the shareholders with a
4 plan; and

5 (b) The shareholders entitled to vote shall approve the plan.

6 (6) The board of directors may condition its submission of the proposed conversion on
7 any basis.

8 (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the
9 proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice
10 shall also state that the purpose, or one (1) of the purposes, of the meeting is to
11 consider the plan of conversion and contain or be accompanied by a copy or
12 summary of the plan.

13 (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors
14 acting pursuant to subsection (6) of this section, require a greater vote or vote by
15 voting groups, the plan of conversion to be authorized shall be approved by each
16 voting group entitled to vote separately on the plan by a majority of all the votes
17 entitled to be cast on the plan by that voting group.

18 (9) Separate voting by voting groups shall be required on a plan of conversion if the
19 plan contains a provision that, if contained in a proposed amendment to the articles
20 of incorporation, would require action by one (1) or more separate voting groups on
21 the proposed amendment under KRS 271B.10-040.

22 (10) After a conversion is authorized, and at any time before articles of organization are
23 filed, the planned conversion may be abandoned subject to any contractual rights,
24 without further shareholder action, in accordance with the procedure set forth in the
25 plan of conversion or, if none is set forth, in the manner determined by the board of
26 directors.

27 (11) After the conversion is approved, the corporation shall file articles of organization

1 with the office of the Secretary of State that satisfy the requirements of KRS
2 275.025 and also include:

3 (a) A statement that the corporation was converted to a limited liability company;

4 (b) Its former name; and

5 (c) ~~A statement that any assumed name held by the corporation has been~~
6 ~~canceled; and~~

7 (d) The designation, number of outstanding shares, and number of votes to be cast
8 by each voting group entitled to vote separately on the plan of conversion and
9 either the total number of undisputed votes cast for the plan separately by each
10 voting group or a statement that the number cast for the plan by each voting
11 group was sufficient for approval by that voting group.

12 (12) The conversion shall take effect when the articles of organization are filed with the
13 office of the Secretary of State or, subject to KRS 275.060, at a later date specified
14 in the articles of organization.

15 ➔Section 45. KRS 275.440 is amended to read as follows:

16 The Secretary of State may commence a proceeding under KRS 275.445 to revoke the
17 certificate of authority of a foreign limited liability company authorized to transact
18 business in this Commonwealth if:

19 (1) The foreign limited liability company does not deliver~~[file]~~ its annual report to the
20 Secretary of State on or before the due date~~[within sixty (60) days after it is due];~~

21 (2) The foreign limited liability company is without a registered agent or registered
22 office in this Commonwealth for sixty (60) days or more;

23 (3) The foreign limited liability company does not inform the Secretary of State under
24 KRS 275.420 and 275.425 that its registered agent or registered office has changed,
25 that its registered agent has resigned, or that its registered office has been
26 discontinued within sixty (60) days of the change, resignation, or discontinuance;

27 (4) A member or manager of the limited liability company or person organizing the

1 foreign limited liability company signed a document the member, manager, or
 2 person knew was false in any material respect with intent that the document be
 3 delivered to the Secretary of State for filing; or

- 4 (5) The Secretary of State receives a duly-authenticated certificate from the Secretary of
 5 State or other official having custody of limited liability company records in the
 6 state or country under whose law the foreign limited liability company is organized
 7 stating that it has been dissolved or disappeared as the result of a merger or other
 8 event.

9 ➔Section 46. KRS 275.445 is amended to read as follows:

- 10 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
 11 275.440 for revocation of a certificate of authority, the Secretary of State shall serve
 12 the foreign limited liability company with written notice of ~~the~~^{its} determination by
 13 mailing the notice by first-class mail to the foreign limited liability company at its
 14 principal~~registered~~ office.

- 15 (2) If the foreign limited liability company does not correct each ground for revocation
 16 or demonstrate to the reasonable satisfaction of the Secretary of State that each
 17 ground determined by the Secretary of State does not exist within sixty (60) days
 18 after the mailing of the notice, the Secretary of State shall revoke the foreign limited
 19 liability company's certificate of authority by signing a certificate of revocation that
 20 recites the ground or grounds for revocation and its effective date. The Secretary of
 21 State shall file the original of the certificate and serve a copy to the foreign limited
 22 liability company by mailing notice by first-class mail to the foreign limited liability
 23 company at its principal~~registered~~ office.

- 24 (3) The authority of a foreign limited liability company to transact business in this
 25 Commonwealth shall cease on the date shown on the certificate of revocation.

- 26 (4) The Secretary of State's revocation of a foreign limited liability company's
 27 certificate of authority shall have the effect of appointing the Secretary of State as

1 the foreign limited liability company's agent for service of process in any
 2 proceeding based on a cause of action which arose during the time the foreign
 3 limited liability company was authorized to transact business in this
 4 Commonwealth. Service of process on the Secretary of State under this subsection
 5 shall be service on the foreign limited liability company. Upon receipt of process,
 6 the Secretary of State shall mail a copy of the process to the appropriate
 7 representative of the foreign limited liability company at its principal office as
 8 shown in its most recent annual report or in any subsequent communication
 9 received from the foreign limited liability company stating the current mailing
 10 address of its principal office, or, if none are on file, in its application for a
 11 certificate of authority.

12 (5) Revocation of a foreign limited liability company's certificate of authority shall not
 13 terminate the authority of the registered agent of the foreign limited liability
 14 company.

15 ➔Section 47. KRS 279.090 is amended to read as follows:

16 (1) No person may become or remain a member of any corporation formed under this
 17 chapter with capital stock except a farmer, a person engaged in the production of
 18 agricultural products or livestock, a cooperative association as defined in the Farm
 19 Credit Act, or a corporation organized under this chapter.

20 (2) No person other than the original incorporators may become or remain a member of
 21 any corporation formed under this chapter without capital stock unless, in addition
 22 to complying with all membership requirements in the articles of incorporation and
 23 bylaws of the corporation, such person uses electric energy supplied by the
 24 corporation or by a corporation that is a member of the corporation in question, or
 25 such person is a corporation formed under this chapter or is a corporation furnishing
 26 electric energy or is a cooperative association as defined in the Farm Credit Act.

27 (3) Any corporation formed under this chapter without capital stock may provide in its

articles of incorporation that, in addition to the requirements for membership set forth in subsection (2) of this section, no person other than the original incorporators may become or remain a member unless that person is a farmer or is a cooperative association within the meaning of the Farm Credit Act, or that a stated percentage of its members must be and remain farmers or cooperative associations within the meaning of the Farm Credit Act.

(4) Any corporation formed under this chapter may become a member of any other corporation formed under this chapter and may fully avail itself of the facilities and services of that corporation.

(5) Each member of a corporation organized under this chapter with or without capital stock shall have only one (1) vote, and memberships shall not be transferable.

(6) Neither the incorporators nor any member of any corporation formed under this chapter shall be personally responsible for any debt, obligation or liability of the corporation, except for promissory notes given for the purchase of common stock in the corporation *or except as the incorporator or member may become personally liable by reason of his or her own acts or conduct.*

➔Section 48. KRS 279.390 is amended to read as follows:

(1) Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use telephone service furnished by the cooperative when it is made available through its facilities. Membership in a cooperative shall be evidenced by a certificate of membership which shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership, provided that ownership of shares of stock, if any are authorized, shall not be a condition of membership in the cooperative.

(2) In case the issuance of shares of stock is provided for in the articles of incorporation, ownership thereof shall be evidenced by share certificates. No share

1 of stock shall be issued except for cash, or for property at its fair value, in an
2 amount equal to the par value of such share of stock.

3 (3) Membership and share certificates shall contain such provisions, consistent with
4 KRS 279.310 to 279.600 and the articles of incorporation of the cooperative, as
5 shall be prescribed by its bylaws.

6 (4) No member or shareholder shall be liable or responsible for any debts of the
7 cooperative and the property of the members and shareholders shall not be subject
8 to execution therefor except as the member or shareholder may become personally
9 liable by reason of his or her own acts or conduct.

10 ➔Section 49. KRS 362.285 is repealed, reenacted, and amended to read as
11 follows:

12 (1) This section provides the exclusive remedy by which the judgment creditor of a
13 partner or the transferee of a partner may satisfy a judgment out of the judgment
14 debtor's transferable interest.

15 (2) On application to a court of competent jurisdiction by a judgment creditor of a
16 partner or a partner's transferee, a court may charge the transferable interest of
17 the judgment debtor with payment of the unsatisfied amount of the judgment. To
18 the extent so charged, the judgment creditor has only the rights of a transferee
19 and shall have no right to participate in the management of or to cause the
20 dissolution of the partnership. The court may appoint a receiver of the share of
21 the distributions due or to become due to the judgment debtor in respect of the
22 partnership and make all other orders, directions, accounts, and inquiries the
23 judgment debtor might have made or which the circumstances of the case may
24 require to give effect to the charging order.

25 (3) A charging order constitutes a lien on and the right to receive distributions made
26 with respect to the judgment debtor's transferable interest in the partnership.

27 (4) The court may order a foreclosure of the interest subject to the charging order at

any time. The purchaser at the foreclosure sale has the rights of a transferee. A charging order does not of itself constitute an assignment of the transferable interest.

(5) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one (1) or more of the other partners; or

(c) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.

(6) This section does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(7) The partnership is not a necessary party to an application for a charging order.

Service of the charging order on a partnership may be made by the court granting the charging order or as the court may otherwise direct.

~~On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.~~

~~(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:~~

~~(a) With separate property, by any one (1) or more of the partners, or~~

~~(b) With partnership property, by any one (1) or more of the partners with the~~

1 consent of all the partners whose interests are not so charged or sold.

2 ~~(3) Nothing in KRS 362.150 to 362.360 shall be held to deprive a partner of his right, if~~
 3 ~~any, under the exemption laws, as regards his interest in the partnership.]~~

4 ➔Section 50. KRS 362.481 is repealed, reenacted, and amended to read as
 5 follows:

6 (1) This section provides the exclusive remedy by which the judgment creditor of a
 7 partner or the transferee of a partner may satisfy a judgment out of the judgment
 8 debtor's transferable interest.

9 (2) On application to a court of competent jurisdiction by any judgment creditor of a
 10 partner or a partner's transferee, the court may charge the transferable interest
 11 of the judgment debtor with payment of the unsatisfied amount of the judgment.
 12 To the extent so charged, the judgment creditor has only the rights of a
 13 transferee, and shall have no right to participate in the management or to cause
 14 the dissolution of the partnership. The court may appoint a receiver of the share
 15 of the distributions due or to become due to the judgment debtor in respect of the
 16 partnership and make all other orders, directions, accounts, and inquiries the
 17 judgment debtor might have made or which the circumstances of the case may
 18 require to give effect to the charging order.

19 (3) A charging order constitutes a lien on and the right to receive distributions made
 20 with respect to the judgment debtor's transferable interest. A charging order does
 21 not of itself constitute an assignment of the transferable interest.

22 (4) The court may order a foreclosure upon the transferable interest subject to the
 23 charging order at any time. The purchaser at the foreclosure sale has the rights
 24 of a transferee.

25 (5) At any time before foreclosure, an interest charged may be redeemed:

26 (a) By the judgment debtor;

27 (b) With property other than limited partnership property, by one (1) or more of

1 the other partners; or

2 (c) With limited partnership property, by the limited partnership with the
 3 consent of all partners whose interests are not so charged.

4 (6) This section does not deprive any partner or a partner's transferee of the benefit
 5 of any exemption laws applicable to the partner's or transferee's transferable
 6 interest.

7 (7) The partnership is not a necessary party to an application for a charging order.
 8 Service of the charging order on a partnership may be made by the court
 9 granting the charging order or as the court may otherwise direct.

10 ~~On application to a court of competent jurisdiction by any judgment creditor of a partner, the court~~
 11 ~~shall charge the partnership interest of the partner with payment of the unsatisfied~~
 12 ~~amount of the judgment with interest. To the extent so charged, the judgment~~
 13 ~~creditor shall have only the rights of an assignee of the partnership interest. KRS~~
 14 ~~362.403 to 362.525 shall not deprive any partner of the benefit of any exemption~~
 15 ~~laws applicable to his partnership interest.]~~

16 ➔Section 51. KRS 362.1-103 is amended to read as follows:

17 (1) Except as otherwise provided in subsection (2) of this section, relations among the
 18 partners and between the partners and the partnership are governed by the
 19 partnership agreement. To the extent the partnership agreement does not otherwise
 20 provide, this subchapter governs relations among the partners and between the
 21 partners and the partnership.

22 (2) The partnership agreement shall not:

23 (a) Vary the rights and duties under KRS 362.1-105 except to eliminate the duty
 24 to provide copies of statements to all of the partners;

25 (b) Unreasonably restrict the right of access to books and records under KRS
 26 362.1-403(2) or unreasonably restrict the right to information KRS 362.1-
 27 403(3);

- 1 (c) Eliminate the duty of loyalty under KRS 362.1-404(2) or 362.1-603(2)(c), but:
 - 2 1. The partnership agreement may identify specific types or categories of
 - 3 activities that do not violate the duty of loyalty, if not manifestly
 - 4 unreasonable; or
 - 5 2. All of the partners or a number or percentage specified in the partnership
 - 6 agreement may authorize or ratify, after full disclosure of all material
 - 7 facts, a specific act or transaction that otherwise would violate the duty
 - 8 of loyalty;
- 9 (d) Unreasonably reduce the duty of care under KRS 362.1-404(3) or 362.1-
10 603(2)(c);
- 11 (e) Eliminate the obligation of good faith and fair dealing under KRS 362.1-404,
12 but the partnership agreement may prescribe the standards by which the
13 performance of the obligation is to be measured, if the standards are not
14 manifestly unreasonable;
- 15 (f) Vary the power to dissociate as a partner under KRS 362.1-602(1), except to
16 require the notice under KRS 362.1-601(1) to be in writing;
- 17 (g) Vary the right of a partner or the partnership to seek a partner's expulsion by
18 judicial determination or vary the right of a court to expel a partner in the
19 events specified in KRS 362.1-601(5);
- 20 (h) Vary the requirement to wind up the partnership business in cases specified in
21 KRS 362.1-801(4), (5), or (6); or
- 22 (i) Vary the law applicable to a limited liability partnership under KRS 362.1-
23 106(2); or
- 24 (j) Vary the liabilities and remedies under KRS 362.1-405 to a greater extent than
25 variations are in fact made under this section in the substantive rights in the
26 partnership agreement giving rise to the partner claims at issue.
- 27 (3) If a written partnership agreement contains a provision to the effect that any

1 amendment to the partnership agreement must be in writing and adopted in
 2 accordance with the provisions of the partnership agreement, that provision shall be
 3 enforceable in accordance with its terms, and any agreement among the partners
 4 concerning the partnership which is not in writing and adopted in accordance with
 5 the provisions of the partnership agreement shall not be part of the partnership
 6 agreement.

7 (4) A partnership agreement may provide that the interest of any partner who fails to
 8 make any contribution that the partner is obligated to make or who otherwise
 9 violates an obligation undertaken in the partnership agreement shall be subject to
 10 specified penalties for, or specified consequences of, such failure. Such penalty or
 11 consequence may take the form of reducing or eliminating the defaulting
 12 partner's proportionate interest in the partnership, subordinating the partner's
 13 interest to that of nondefaulting partners, a forced sale of that interest, forfeiture
 14 of his or her interest, the lending by other partners of the amount necessary to
 15 meet the defaulting partner's commitment, a fixing of the value of his or her
 16 interest by appraisal or by formula and redemption or sale of the interest in the
 17 partnership at such value, or other penalty or consequence.

18 (5) A partnership agreement may provide rights to any person, including a person
 19 who is not a partner or not otherwise a party to the partnership agreement, to the
 20 extent set forth therein.

21 (6) No partner or other person shall have a vested property right resulting from any
 22 provision of a partnership agreement which may not be modified by its
 23 amendment or as otherwise permitted by law.

24 ➔ Section 52. KRS 362.1-104 is amended to read as follows:

- 25 (1) Unless displaced by particular provisions of this subchapter, the principles of law
 26 and equity supplement this subchapter.
- 27 (2) If an obligation to pay interest arises under this subchapter and the rate is not

1 specified, then the rate is that specified in KRS 360.010.

2 (3) Subject to KRS 362.1-103(2), it shall be the policy of the Commonwealth
 3 in~~[General Assembly through]~~ this subchapter to give maximum effect to the
 4 principles of freedom of contract and the enforceability of partnership agreements.
 5 Although this subchapter is in derogation of common law, the rules of construction
 6 that require strict construction of statutes that are in derogation of common law
 7 shall not apply to its provisions. Except as otherwise expressly provided herein, this
 8 subchapter shall not be construed to impair the obligation of any contract existing
 9 when this subchapter, or any amendment thereto, becomes effective, nor to affect
 10 any action or proceeding begun, or right accrued before this subchapter or any
 11 amendment thereto takes effect.

12 (4) A professional partnership shall be governed by the laws, whether statutory or
 13 common law, applicable to other partnerships. Except for the provisions of this
 14 subchapter concerning the personal liability of partners, employees, and agents of a
 15 partnership, nothing in this subchapter shall restrict, limit, or expand in any manner
 16 the authority and duty of any regulatory board to:

17 (a) License individual persons providing professional services; and

18 (b) Regulate the practice of persons providing professional services which are
 19 within the jurisdiction of the regulatory board, even though the persons are
 20 partners, employees, or agents of a professional partnership, or provide
 21 professional services through a professional partnership, including the
 22 establishment of regulations concerning:

23 1. The qualifications of partners of a professional partnership;

24 2. The transfer of partnership interests in a professional partnership; or

25 3. The provision of one (1) or more professional services through a
 26 professional partnership.

27 (5) Action validly taken pursuant to a provision of this chapter shall not be deemed

invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

➔Section 53. KRS 362.1-121 is amended to read as follows:

(1) Each limited liability partnership and each foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to KRS 362.1-1101 to 362.1-1104 shall deliver to the Secretary of State for filing~~[file]~~ an annual report in the office of the Secretary of State on such form as shall be prescribed by the Secretary of State which contains:

(a) The name of the partnership and the state or other jurisdiction under whose laws it is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any; and

(c) The address of its registered office and the name of its registered agent in this Commonwealth.

(2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the partnership.

(3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a partnership files a statement of qualification or statement of foreign qualification. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.

(4) If an annual report does not contain the information required by this section, then the Secretary of State shall promptly notify the reporting partnership in writing and return the report to it for correction.

(5) A limited liability partnership or foreign limited liability partnership may amend the

1 information in its last filed annual report by delivery to the Secretary of State of an
 2 amendment to the annual report on an appropriate form provided by the Secretary of
 3 State.

4 ➔Section 54. KRS 362.1-122 is amended to read as follows:

5 (1) The Secretary of State may commence a proceeding to administratively dissolve a
 6 statement of qualification if:

7 (a) The limited liability partnership does not deliver~~[file]~~ its annual report with
 8 the Secretary of State on or before the due date~~[within sixty (60) days after it~~
 9 ~~is due]~~;

10 (b) The limited liability partnership is without a registered agent or registered
 11 office in this Commonwealth for sixty (60) days or more; or

12 (c) The limited liability partnership does not notify the Secretary of State within
 13 sixty (60) days that its registered agent or registered office has been changed,
 14 that its registered agent has resigned, or that its registered office has been
 15 discontinued.

16 (2) If the Secretary of State determines that one (1) or more grounds exist under
 17 subsection (1) of this section for the administrative dissolution of a statement of
 18 qualification, then the Secretary of State~~[he]~~ shall serve the partnership with
 19 written notice of the~~[his]~~ determination by mailing such notice by first class mail to
 20 the limited liability partnership at the street address of the partnership's chief
 21 executive office as set forth in the partnership's most recent annual report filed
 22 pursuant to KRS 362.1-121 or, if none, that set forth in the statement of partnership
 23 qualification filed pursuant to KRS 362.1-1001 or the statement of foreign
 24 qualification filed by a foreign limited liability partnership pursuant to KRS 362.1-
 25 1102.

26 (3) If the limited liability partnership does not correct each ground for dissolution or
 27 demonstrate to the reasonable satisfaction of the Secretary of State that each ground

1 determined by the Secretary of State does not exist within sixty (60) days from the
 2 date on which the notice was mailed, then the Secretary of State shall
 3 administratively dissolve the statement of qualification by signing a certificate of
 4 dissolution that recites the ground or grounds for dissolution and its effective date.
 5 The Secretary of State shall file the original certificate and serve a copy on the
 6 limited liability partnership by mailing such certificate by first class mail to the
 7 partnership at its chief executive~~[registered]~~ office address. The administrative
 8 dissolution of a statement of qualification shall not terminate the authority of the
 9 registered agent of the partnership.

10 (4) The administrative dissolution of a statement of qualification affects only the
 11 partnership's status as a limited liability partnership and is not an event of
 12 dissolution of the partnership.

13 (5) The partnership whose statement of qualification has been administratively
 14 dissolved may apply to the Secretary of State for reinstatement of the statement at
 15 any time after the effective date of the dissolution by filing an application that:

16 (a) Recites the name of the partnership, identifies the statement that was
 17 administratively dissolved and the effective date of that administrative
 18 dissolution;

19 (b) States that the ground or grounds for dissolution either did not exist or have
 20 been eliminated;

21 (c) States that the name of the partnership satisfies the requirements of KRS
 22 362.1-114; and

23 (d) Is accompanied by the reinstatement penalty and the current fee for filing each
 24 delinquent annual report.

25 (6) If the Secretary of State determines that the application contains the information
 26 required by subsection (5) of this section and that the information provided therein
 27 is correct, then the Secretary of State shall cancel the certificate of administrative

dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its chief executive~~[registered]~~ office address. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.

- (7) If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then the Secretary of State~~[he]~~ shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its chief executive~~[registered]~~ office address. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the partnership's application for reinstatement, and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

➔Section 55. KRS 362.1-123 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding under subsection (2) of this section to revoke the statement of foreign qualification of a foreign limited liability partnership authorized to transact business in this Commonwealth if:
- (a) The foreign limited liability partnership does not deliver~~[file]~~ its annual report

1 to the Secretary of State on or before its due date~~[within sixty (60) days after~~
 2 ~~it is due]~~;

3 (b) The foreign limited liability partnership is without a registered agent or
 4 registered office in this Commonwealth for sixty (60) days or more;

5 (c) The foreign limited liability partnership does not inform the Secretary of State
 6 that its registered agent or registered office has changed, that its registered
 7 agent has resigned, or that its registered office has been discontinued within
 8 sixty (60) days of the change, resignation or discontinuance; or

9 (d) The Secretary of State receives a duly authenticated certificate from the
 10 Secretary of State or other official having custody of partnership records in the
 11 state or country under whose law the foreign limited liability partnership is
 12 formed stating that it has been dissolved or disappeared as the result of a
 13 merger, consolidation or conversion.

14 (2) If the Secretary of State determines that one (1) or more grounds exist for the
 15 revocation of a statement of foreign qualification, then the Secretary of State~~[he]~~
 16 shall serve the foreign limited liability partnership with written notice of the~~[his]~~
 17 determination by mailing the notice by first class mail to the foreign limited liability
 18 partnership at the street address of the partnership's chief executive office as set
 19 forth in the most recent annual report filed pursuant to KRS 362.1-121 or, if none,
 20 that set forth in the statement of foreign qualification filed pursuant to KRS 362.1-
 21 1102.

22 (3) If the foreign limited liability partnership does not correct each ground for
 23 revocation or demonstrate to the reasonable satisfaction of the Secretary of State
 24 that each ground determined by the Secretary of State does not exist within sixty
 25 (60) days after the mailing of the notice, then the Secretary of State may revoke the
 26 foreign limited liability partnership's statement of foreign qualification by signing a
 27 certificate of revocation that recites the ground or grounds for revocation and its

1 effective date. The Secretary of State shall file the original of the certificate and
2 serve a copy on the foreign partnership by mailing the notice by first class mail to
3 the foreign limited liability partnership at the street address of the partnership's chief
4 executive office as set forth in the most recent annual report filed pursuant to KRS
5 362.1-121 or, if none, that set forth in the statement of foreign qualification filed
6 pursuant to KRS 362.1-1102.

7 (4) The authority of a foreign limited liability partnership to transact business in this
8 Commonwealth shall cease on the date shown on the certificate revoking its
9 statement of foreign qualification.

10 (5) The Secretary of State's revocation of a foreign limited liability partnership's
11 statement of foreign qualification shall be considered to appoint the Secretary of
12 State the foreign limited liability partnership's agent for service of process in any
13 proceeding based on the cause of action that arose during the time the foreign
14 limited liability partnership was authorized to transact business in this
15 Commonwealth. Service of process on the Secretary of State under this subsection
16 shall be service on the foreign limited liability partnership. Upon receipt of process,
17 the Secretary of State shall mail a copy of the process to the foreign limited liability
18 partnership at its chief executive~~[principal]~~ office address shown in its most recent
19 annual report or any subsequent communication received from the foreign limited
20 liability partnership stating the current mailing address of its principal office, or, if
21 none are on file, in its statement of foreign qualification.

22 (6) Revocation of a foreign limited liability partnership's statement of foreign
23 qualification shall not terminate the authority of the registered agent of the
24 partnership.

25 (7) A foreign limited liability partnership may appeal the Secretary of State's revocation
26 of its statement of foreign qualification to the Franklin Circuit Court within thirty
27 (30) days after service of the certificate of revocation. The foreign limited liability

1 partnership may appeal by petitioning the court to set aside the revocation and
 2 attaching to the petition copies of its statement of foreign qualification and the
 3 Secretary of State's certificate of revocation.

4 (8) The court may summarily order the Secretary of State to reinstate the statement of
 5 foreign qualification or may take any other action the court considers appropriate.

6 (9) The court's final decision may be appealed as in other civil proceedings.

7 ➔Section 56. KRS 362.1-504 is amended to read as follows:

8 (1) This section provides the exclusive remedy by which the judgment creditor of a
 9 partner or the transferee of a partner may satisfy a judgment out of the judgment
 10 debtor's transferable interest.

11 (2) On application to a court of competent jurisdiction by a judgment creditor of a
 12 partner or a partner's transferee, a court may charge the transferable interest of the
 13 judgment debtor with payment of the unsatisfied amount of the judgment. To the
 14 extent so charged, the judgment creditor has only the rights of a transferee and shall
 15 have no right to participate in the management of or to cause the dissolution of the
 16 partnership. The court may appoint a receiver of the share of the distributions due or
 17 to become due to the judgment debtor in respect of the partnership and make all
 18 other orders, directions, accounts, and inquiries the judgment debtor might have
 19 made or which the circumstances of the case may require to give effect to the
 20 charging order.

21 (3) A charging order constitutes a lien on and the right to receive distributions made
 22 with respect to the judgment debtor's transferable interest in the partnership.

23 (4) The court may order a foreclosure of the interest subject to the charging order at any
 24 time. The purchaser at the foreclosure sale has the rights of a transferee. A charging
 25 order does not of itself constitute an assignment of the transferable interest.

26 (5) At any time before foreclosure, an interest charged may be redeemed:

27 (a) By the judgment debtor;

1 (b) With property other than partnership property, by one (1) or more of the other
2 partners; or

3 (c) With partnership property, by one (1) or more of the other partners with the
4 consent of all of the partners whose interests are not so charged.

5 (6) This subchapter does not deprive a partner or a partner's transferee of a right under
6 exemption laws with respect to the partner's or transferee's interest in the
7 partnership.

8 **(7) The partnership is not a necessary party to an application for a charging order.**

9 **Service of the charging order on a partnership may be made by the court**
10 **granting the charging order or as the court may otherwise direct.**

11 ➔Section 57. KRS 362.1-906 is amended to read as follows:

12 (1) When a merger takes effect:

13 (a) The separate existence of every partnership or limited partnership that is a
14 party to the merger, other than the surviving entity, ceases;

15 (b) All property owned by each of the merged partnerships or limited partnerships
16 vests in the surviving entity;

17 (c) All obligations of every partnership or limited partnership that is a party to the
18 merger become the obligations of the surviving entity; and

19 (d) An action or proceeding pending against a partnership or limited partnership
20 that is a party to the merger may be continued as if the merger had not
21 occurred, or the surviving entity may be substituted as a party to the action or
22 proceeding.

23 (2) The Secretary of State of this Commonwealth is the agent for service of process in
24 an action or proceeding against a surviving foreign partnership or limited
25 partnership to enforce an obligation of a domestic partnership or limited partnership
26 that is a party to a merger. The surviving entity shall promptly notify the Secretary
27 of State of the mailing address of its chief executive office and of any change of

- 1 address. Upon receipt of process, the Secretary of State shall mail a copy of the
 2 process to the surviving foreign partnership or limited partnership.
- 3 (3) A partner of the surviving partnership or limited partnership is liable for:
- 4 (a) All obligations of a party to the merger for which the partner was personally
 5 liable before the merger;
- 6 (b) All other obligations of the surviving entity incurred before the merger by a
 7 party to the merger, but those obligations may be satisfied only out of property
 8 of the entity; and
- 9 (c) Except as otherwise provided in KRS 362.1-306, all obligations of the
 10 surviving entity incurred after the merger takes effect, but those obligations
 11 may be satisfied only out of property of the entity if the partner is a limited
 12 partner.
- 13 (4) If the obligations incurred before the merger by a party to the merger are not
 14 satisfied out of the property of the surviving partnership or limited partnership, then
 15 the general partners of that party immediately before the effective date of the merger
 16 shall contribute the amount necessary to satisfy that party's obligations to the
 17 surviving entity, in the manner provided in KRS 362.1-807 or in the Limited
 18 Partnership Act of the jurisdiction in which the party was formed, as the case may
 19 be, as if the merged party were dissolved.
- 20 (5) A partner of a party to a merger who does not become a partner of the surviving
 21 partnership or limited partnership is dissociated from the entity, of which that
 22 partner was a partner, as of the date the merger takes effect. The surviving entity
 23 shall cause the partner's interest in the entity to be purchased under KRS 362.1-701
 24 or another statute specifically applicable to that partner's interest with respect to a
 25 merger. The surviving entity is bound under KRS 362.1-702 by an act of a general
 26 partner dissociated under this subsection, and the partner is liable under KRS 362.1-
 27 703 for transactions entered into by the surviving entity after the merger takes

1 effect.

2 (6) Unless otherwise provided in the partnership agreement, a partner has no right to
3 dissent from a merger.

4 **(7) If the surviving business entity is a partnership, the written partnership**
5 **agreement provided for in the plan of merger, if any, shall be binding upon each**
6 **partner in that partnership.**

7 ➔Section 58. KRS 362.2-106 is amended to read as follows:

8 **(1)** The law of this Commonwealth governs relations among the partners of a limited
9 partnership, and between the partners and the limited partnership, and the liability
10 of partners as partners for an obligation of a limited partnership.

11 **(2) A limited partnership governed by this subchapter is subject to any amendment or**
12 **repeal of this subchapter.**

13 ➔Section 59. KRS 362.2-107 is amended to read as follows:

14 (1) Unless displaced by particular provisions of this subchapter, the principles of law
15 and equity supplement this subchapter.

16 (2) If an obligation to pay interest arises under this subchapter and the rate is not
17 specified, then the rate is that specified in KRS 360.010.

18 (3) Subject to KRS 362.2-110(2), it shall be the public policy of the Commonwealth in
19 this subchapter to give maximum effect to the principles of freedom of contract and
20 the enforceability of partnership agreements. Unless displaced by particular
21 provisions of this subchapter, the principles of law and equity shall supplement this
22 subchapter. Although this subchapter is in derogation of the common law, the rules
23 of construction that require strict construction of statutes that are in derogation of
24 common law shall not apply to its provisions. Except as otherwise expressly
25 provided herein, this subchapter shall not be construed to impair the obligation of
26 any contract existing when this subchapter, or any amendment thereto, becomes
27 effective, nor to affect any action or proceeding begun or right accrued before this

subchapter or any amendment thereto takes effect.

(4) Action validly taken pursuant to a provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

➔Section 60. KRS 362.2-110 is amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this subchapter governs relations among the partners and between the partners and the partnership.

(2) The partnership agreement shall not:

(a) Vary a limited partnership's power under KRS 362.2-105 to sue, be sued, and defend in its own name;

(b) Vary the law applicable to a limited partnership under KRS 362.2-106;

(c) Vary the requirements of KRS 362.2-204;

(d) Vary the information required under KRS 362.2-111~~[141.407]~~ or unreasonably restrict the right to information under KRS 362.2-304 and 362.2-407, but the partnership agreement may provide a different location for the maintenance of the books and records, and impose reasonable limitations on the availability and use of information obtained under those sections, and may define appropriate remedies, including liquidated damages, for a breach of any reasonable limitation on use;

(e) Eliminate the duty of loyalty under KRS 362.2-408, but the partnership agreement may:

1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

- 1 2. Specify the number or percentage of partners which may authorize or
- 2 ratify, after full disclosure to all partners of all material facts, a specific
- 3 act or transaction that otherwise would violate the duty of loyalty;
- 4 (f) Unreasonably reduce the duty of care under KRS 362.2-408(3);
- 5 (g) Eliminate the obligation of good faith and fair dealing under KRS 362.2-
- 6 305(2) and 362.2-408(4), but the partnership agreement may prescribe the
- 7 standards by which the performance of the obligation is to be measured, if the
- 8 standards are not manifestly unreasonable;
- 9 (h) Vary the power of a person to dissociate as a general partner under KRS
- 10 362.2-604(1), except to require that the notice under KRS 362.2-603(1) be in
- 11 a record;
- 12 (i) Vary the right of a court to decree dissolution in the circumstances specified in
- 13 KRS 362.2-802;
- 14 (j) Vary the requirement to wind up the partnership's business as specified in
- 15 KRS 362.2-803;
- 16 (k) Unreasonably restrict the right to bring an action under KRS 362.2-1001 to
- 17 362.2-1005; or
- 18 (l) Restrict the right of a partner under KRS 362.2-1110(1) to consent to a merger
- 19 or conversion or the right of a general partner under KRS 362.2-1110(2) to
- 20 consent to an amendment to the certificate of limited partnership which
- 21 deletes a statement that the limited partnership is a limited liability limited
- 22 partnership.
- 23 (3) If a written partnership agreement contains a provision to the effect that any
- 24 amendment to the partnership agreement must be in writing and adopted in
- 25 accordance with the provisions of the partnership agreement, that provision shall be
- 26 enforceable in accordance with its terms, and any agreement among the partners
- 27 concerning the partnership which is not in writing and adopted in accordance with

the provisions of the partnership agreement shall not be part of the partnership agreement.

(4) A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make or who otherwise violates an obligation undertaken in the partnership agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the partnership, subordinating the partner's interest to that of nondefaulting partners, a forced sale of that interest, forfeiture of his or her interest, the lending by other partners of the amount necessary to meet the defaulting partner's commitment, a fixing of the value of his or her interest by appraisal or by formula and redemption or sale of the interest in the partnership at such value, or other penalty or consequence.

(5) A partnership agreement may provide rights to any person, including a person who is not a partner or not otherwise a party to the partnership agreement, to the extent set forth therein.

(6) No partner or other person shall have a vested property right resulting from any provision of a certificate of limited partnership or partnership agreement which may not be modified by its amendment or as otherwise permitted by law.

➔ Section 61. KRS 362.2-303 is amended to read as follows:

(1) An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of any limited partner. A limited partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

(2) Subsection (1) of this section shall not affect the liability of a limited partner for

1 **his or her own negligence, wrongful acts, or misconduct.**

2 ➔Section 62. KRS 362.2-404 is amended to read as follows:

3 (1) Except as otherwise provided in subsections (2) and (3) of this section, all general
4 partners are liable jointly and severally for all obligations of the limited partnership
5 unless otherwise agreed by the claimant or provided by law.

6 (2) A person admitted as a general partner into an existing limited partnership is not
7 personally liable for any limited partnership obligation incurred before the person's
8 admission as a general partner.

9 (3) An obligation of a limited partnership incurred while the limited partnership is a
10 limited liability limited partnership, whether arising in contract, tort, or otherwise, is
11 solely the obligation of the limited partnership. A general partner is not personally
12 liable, directly or indirectly, by way of indemnification, contribution, assessment, or
13 otherwise, for such an obligation solely by reason of being or acting as a general
14 partner. This subsection applies despite anything inconsistent in the partnership
15 agreement that existed immediately before the consent required to become a limited
16 liability limited partnership under KRS 362.2-406(2)(b).

17 **(4) Subsection (3) of this section shall not affect the liability of a general partner for**
18 **his or her own negligence, wrongful acts, or misconduct.**

19 ➔Section 63. KRS 362.2-703 is amended to read as follows:

20 (1) This section provides the exclusive remedy by which the judgment creditor of a
21 partner or the transferee of a partner may satisfy a judgment out of the judgment
22 debtor's transferable interest.

23 (2) On application to a court of competent jurisdiction by any judgment creditor of a
24 partner or a partner's transferee, the court may charge the transferable interest of the
25 judgment debtor with payment of the unsatisfied amount of the judgment. To the
26 extent so charged, the judgment creditor has only the rights of a transferee, and shall
27 have no right to participate in the management or to cause the dissolution of the

1 partnership. The court may appoint a receiver of the share of the distributions due or
 2 to become due to the judgment debtor in respect of the partnership and make all
 3 other orders, directions, accounts, and inquiries the judgment debtor might have
 4 made or which the circumstances of the case may require to give effect to the
 5 charging order.

6 (3) A charging order constitutes a lien on and the right to receive distributions made
 7 with respect to the judgment debtor's transferable interest. A charging order does
 8 not of itself constitute an assignment of the transferable interest.

9 (4) The court may order a foreclosure upon the transferable interest subject to the
 10 charging order at any time. The purchaser at the foreclosure sale has the rights of a
 11 transferee.

12 (5) At any time before foreclosure, an interest charged may be redeemed:

13 (a) By the judgment debtor;

14 (b) With property other than limited partnership property, by one (1) or more of
 15 the other partners; or

16 (c) With limited partnership property, by the limited partnership with the consent
 17 of all partners whose interests are not so charged.

18 (6) This subchapter does not deprive any partner or a partner's transferee of the benefit
 19 of any exemption laws applicable to the partner's or transferee's transferable
 20 interest.

21 **(7) The partnership is not a necessary party to an application for a charging order.**

22 **Service of the charging order on a partnership may be made by the court**
 23 **granting the charging order or as the court may otherwise direct.**

24 ➔Section 64. KRS 362.2-809 is amended to read as follows:

25 (1) The Secretary of State may commence a proceeding to administratively dissolve a
 26 domestic limited partnership if:

27 (a) The limited partnership does not **deliver**~~[file]~~ its annual report ~~to~~~~[with]~~ the

1 Secretary of State on or before the due date~~[within sixty (60) days after it is~~
 2 ~~due]~~;

3 (b) The limited partnership is without a registered agent or registered office in this
 4 Commonwealth for sixty (60) days or more; or

5 (c) The partnership does not notify the Secretary of State within sixty (60) days
 6 that its registered agent or registered office has been changed, that its
 7 registered agent has resigned, or that its registered office has been
 8 discontinued.

9 (2) If the Secretary of State determines that one (1) or more grounds exist for the
 10 administrative dissolution of a limited partnership, then the Secretary of State~~[he]~~
 11 shall send to the partnership at its designated~~[registered]~~ office by first class mail a
 12 written notice of that determination.

13 (3) If the limited partnership does not correct each ground for dissolution or
 14 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
 15 determined by the Secretary of State does not exist within sixty (60) days from the
 16 date on which the notice was mailed, then the Secretary of State shall
 17 administratively dissolve the limited partnership by signing a certificate of
 18 dissolution that recites the ground or grounds for dissolution and its effective date.
 19 The Secretary of State shall file the original certificate and serve a copy on the
 20 limited partnership by mailing such certificate by first class mail to the limited
 21 partnership at its registered office.

22 (4) A limited partnership administratively dissolved continues its existence but shall
 23 not carry on any business except that necessary to wind up and liquidate its business
 24 and affairs as provided in KRS 362.2-803 to 362.2-812.

25 (5) The administrative dissolution of a limited partnership shall not terminate the
 26 authority of its registered agent.

27 ➔Section 65. KRS 362.2-810 is amended to read as follows:

- 1 (1) A limited partnership administratively dissolved may apply to the Secretary of State
2 for reinstatement at any time after the effective date of the dissolution by filing an
3 application that:
 - 4 (a) Recites the name of the limited partnership and identifies the effective date of
5 that administrative dissolution;
 - 6 (b) States that the ground or grounds for dissolution either did not exist or have
7 been eliminated;
 - 8 (c) States that the name of the limited partnership satisfies the requirements of
9 KRS 362.2-108; and
 - 10 (d) Is accompanied by the reinstatement penalty and the current fee for filing each
11 delinquent annual report.
- 12 (2) If the Secretary of State determines that the application contains the information
13 required by subsection (1) of this section and that the information provided therein
14 is correct, then the Secretary of State~~he~~ shall cancel the certificate of
15 administrative dissolution, prepare a certificate reciting the cancellation of the
16 administrative dissolution and the effective date thereof, file the original of the
17 certificate, and send a copy of the certificate to the limited partnership by first class
18 mail at its designated~~registered~~ office.
- 19 (3) When the revocation of the administrative dissolution is effective, it shall relate
20 back to and take effect as of the effective date of the administrative dissolution, and
21 the limited partnership shall resume carrying on its business as if the administrative
22 dissolution or revocation had never occurred.
- 23 (4) Notwithstanding any other provision to the contrary, any limited partnership that
24 was administratively dissolved or revoked and has taken the action necessary to
25 wind up and liquidate its business and affairs under KRS 362.2-803 and to notify
26 claimants under KRS 362.2-806 and 362.2-807 shall be prohibited from
27 reinstatement.

➔Section 66. KRS 362.2-811 is amended to read as follows:

- (1) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, then the Secretary of State~~[he]~~ shall serve the limited partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the limited partnership at its designated~~[registered]~~ office.
- (2) The limited partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The limited partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the limited partnership's application for reinstatement, and the Secretary of State's notice of denial.
- (3) The court may summarily order the Secretary of State to reinstate the limited partnership, or may take any other action the court considers appropriate.
- (4) The court's final decision may be appealed as in any other civil proceedings.

➔Section 67. KRS 362.2-906 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 362.2-907 to revoke the certificate of authority of a foreign partnership authorized to transact business in this Commonwealth if:

- (1) The foreign partnership does not deliver~~[file]~~ its annual report to the Secretary of State on or before the due date~~[within sixty (60) days after it is due];~~
- (2) The foreign partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change,

1 resignation, or discontinuance; or

2 (4) The Secretary of State receives a duly authenticated certificate from the Secretary of
3 State or other official having custody of partnership records in the state or other
4 jurisdiction under whose law the foreign limited partnership is organized stating
5 that it has been dissolved or disappeared as the result of a merger.

6 ➔Section 68. KRS 362.2-907 is amended to read as follows:

7 (1) If the Secretary of State determines that one (1) or more grounds exist for the
8 revocation of a certificate of authority, then the Secretary of State~~[he]~~ shall serve
9 the foreign limited partnership with written notice of the~~[his]~~ determination by
10 mailing the notice by first class mail to the foreign limited partnership at its
11 principal~~[registered]~~ office.

12 (2) If the foreign limited partnership does not correct each ground for revocation or
13 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
14 determined by the Secretary of State does not exist within sixty (60) days after the
15 mailing of the notice, then the Secretary of State may revoke the foreign limited
16 partnership's certificate of authority by signing a certificate of revocation that recites
17 the ground or grounds for revocation and its effective date. The Secretary of State
18 shall file the original of the certificate and serve a copy on the foreign limited
19 partnership by mailing the notice by first class mail to the limited partnership at its
20 principal~~[registered]~~ office.

21 (3) The authority of a foreign limited partnership to transact business in this
22 Commonwealth shall cease on the date shown on the certificate revoking its
23 certificate of authority.

24 (4) The Secretary of State's revocation of a foreign limited partnership's certificate of
25 authority shall be considered to appoint the Secretary of State the foreign limited
26 partnership's agent for service of process in any proceeding based on the cause of
27 action which arose during the time the foreign limited partnership was authorized to

transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign limited partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited partnership at its principal office shown in its most recent annual report or any subsequent communication received from the limited partnership stating the current mailing address of its principal~~[registered]~~ office, or, if none are on file, in its certificate of authority.

(5) Revocation of a foreign limited partnership's certificate of authority shall not terminate the authority of the registered agent of the limited partnership.

(6) A foreign limited partnership may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after service of the certificate of revocation. The foreign limited partnership may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(7) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(8) The court's final decision may be appealed as in other civil proceedings.

➔Section 69. KRS 362.2-1104 is amended to read as follows:

(1) After a plan of conversion of a limited liability company into a limited partnership is approved, a converting limited liability company shall deliver to the Secretary of State for filing a certificate of limited partnership~~[,]~~ which satisfies the requirements of KRS 362.2-201 and includes~~[shall include]~~:

- (a) A statement that the limited liability company has been converted into a limited partnership;
- (b) The name of that limited liability company and its jurisdiction;
- (c) A statement that the conversion was approved as required by this subchapter;

(d) A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and

(e) If the converted limited liability company is a foreign limited liability company not authorized to transact business in this Commonwealth, the street and mailing address of an office which the Secretary of State may use for the purposes of KRS 362.2-1105(3).

(2) A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.

➔Section 70. KRS 362.2-1109 is amended to read as follows:

When a merger takes effect:

(1) The separate existence of every domestic limited partnership that is a party to the merger except the surviving domestic limited partnership, if any, shall cease;

(2) The title to all real estate and other property owned by each domestic limited partnership that is a party to the merger shall be vested in the surviving entity without reversion or impairment;

(3) The surviving entity shall be responsible for all liabilities of each domestic limited partnership that is a party to the merger;

(4) A proceeding pending by or against any domestic limited partnership party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted in the proceeding for the domestic limited partnership whose existence ceased;

(5) If a domestic limited partnership is the surviving entity of the merger, then the certificate of limited partnership and partnership agreement of that limited partnership shall be amended to the extent provided in the plan of merger; and

(6) The partnership interests of every domestic limited partnership that is a party to the merger that are to be converted into partnership interests, membership interests, shares, or other securities or obligations of the surviving limited partnership, limited

1 liability company, or corporation or into cash or other property, in whole or in part,
 2 shall be so converted and the former holders of such partnership interests shall be
 3 entitled only to the rights provided in the plan of merger.

4 (7) If the surviving business entity is a limited partnership, such amendments to the
 5 certificate of limited partnership thereof as are set forth in the plan of merger
 6 shall be effective.

7 (8) If the surviving business entity is a limited partnership, the written partnership
 8 agreement provided for in the plan of merger, if any, shall be binding upon each
 9 partner in that limited partnership.

10 ➔Section 71. KRS 365.015 is amended to read as follows:

11 (1) (a) The real name of an individual shall include his or her surname at birth, or his
 12 or her name as changed by a court of competent jurisdiction, or the surname of
 13 a married woman.

14 (b) The real name of a domestic:

- 15 1. General partnership that is not a limited liability partnership and that has
 16 not filed a statement of partnership authority is that name which includes
 17 the real name of each of the partners;
- 18 2. General partnership that is not a limited liability partnership and that has
 19 filed a statement of partnership authority is the name set forth on the
 20 statement of partnership authority;
- 21 3. General partnership that is a limited liability partnership is the name
 22 stated on the statement of qualification filed pursuant to KRS 362.1-
 23 1001 or predecessor law;
- 24 4. Limited partnership is that name stated in its certificate of limited
 25 partnership filed pursuant to KRS 362.2-201 or predecessor law;
- 26 5. Business trust is the name set forth in the declaration of trust;
- 27 6. Corporation is the name set forth in its articles of incorporation; and

1 7. Limited liability company is the name set forth in its articles of
2 organization.

3 (c) The real name of a foreign:

- 4 1. General partnership is the name recognized by the laws of the
5 jurisdiction under which it is formed as being the real name;
- 6 2. Limited liability partnership is the name stated in its statement of foreign
7 qualification filed pursuant to KRS 362.1-1102 or predecessor law;
- 8 3. Limited partnership is the name set forth in its certificate of limited
9 partnership or the fictitious name adopted for use in this Commonwealth
10 under KRS 362.2-905 or predecessor law;
- 11 4. Business trust is the name recognized by the laws of the jurisdiction
12 under which it is formed as being the real name of the business trust or
13 the fictitious name adopted for use in this Commonwealth under KRS
14 386.4432;
- 15 5. Corporation is the name set forth in its articles of incorporation or the
16 fictitious name adopted for use in this Commonwealth under KRS
17 271B.15-060 or 273.364; and
- 18 6. Limited liability company is the name set forth in its articles of
19 organization or the fictitious name adopted for use in this
20 Commonwealth under KRS 275.410.

21 (2) (a) No individual, general partnership, limited partnership, business trust,
22 corporation, or limited liability company shall conduct or transact business in
23 this Commonwealth under an assumed name or any style other than his, her,
24 or its real name, as defined in subsection (1) of this section, unless such
25 individual, general partnership, limited partnership, business trust,
26 corporation, or limited liability company has filed a certificate of assumed
27 name;

- 1 (b) The certificate shall state the assumed name under which the business will be
2 conducted or transacted, the real name of the individual, general partnership,
3 limited partnership, business trust, corporation, or limited liability company
4 and his, or her, or its address, including street and number, if any;
- 5 (c) A separate certificate shall be filed for each assumed name;
- 6 (d) No certificate to be filed with the Secretary of State shall set forth an assumed
7 name which is not distinguishable upon the records of the Secretary of State
8 from any other name previously filed and on record with the Secretary of
9 State;
- 10 (e) The certificate shall be executed for an individual, by the individual; for a
11 general partnership, by at least one (1) partner authorized to do so by the
12 partners; for a limited partnership, by a general partner; for a business trust, by
13 a trustee; for a corporation, by any person authorized to act for the
14 corporation; and for a limited liability company, by a member or manager
15 authorized to act for the limited liability company.
- 16 (3) Each certificate of assumed name for an individual shall be filed with the county
17 clerk where the person maintains his or her principal place of business. Each
18 certificate of assumed name for a general partnership, limited partnership, business
19 trust, corporation, or limited liability company shall be delivered to the Secretary of
20 State for filing, accompanied by one (1) exact or conformed copy. One (1) of the
21 exact or conformed copies stamped as "filed" by the Secretary of State shall be filed
22 with the county clerk of the county where the entity maintains its registered agent
23 for service of process or, if no registered agent for service of process is required,
24 then with the county clerk of the county where the entity maintains its principal
25 office. If the entity does not maintain a registered agent for service of process and
26 does not maintain a principal office in this Commonwealth, then the certificate of
27 assumed name shall be filed only with the Secretary of State.

- 1 (4) An assumed name shall be effective for a term of five (5) years from the date of
 2 filing and may be renewed for successive terms upon filing a renewal certificate
 3 within six (6) months prior to the expiration of the term, in the same manner of
 4 filing the original certificate as set out in subsection (3) of this section. Any
 5 certificate in effect on July 15, 1998, shall continue in effect for five (5) years and
 6 may be renewed by filing a renewal certificate with the Secretary of State.
- 7 (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn
 8 by filing a certificate in the office wherein the original certificate of assumed name
 9 was filed. The certificate of withdrawal shall state the assumed name, the real name
 10 and address of the party formerly transacting business under the assumed name and
 11 the date upon which the original certificate was filed. The certificate of withdrawal
 12 shall be signed for a general partnership by at least one (1) partner authorized to act
 13 for the partnership, for a limited partnership by a general partner, for a business trust
 14 by a trustee, for a corporation by any person authorized to act for the corporation,
 15 and for a limited liability company by a member or manager authorized to act for
 16 the limited liability company.
- 17 (6) A general partnership, except a limited liability partnership, shall amend an
 18 assumed name certificate to reflect a change in the identity of partners. The
 19 amendment shall set forth:
- 20 (a) The assumed name and date of original filing;
 - 21 (b) A statement setting out the changes in identity of the partners; and
 - 22 (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- 23 (7) The filing of a certificate of assumed name shall not automatically prevent the use
 24 of that name or protect that name from use by other persons.
- 25 (8) In the event of the merger or conversion of a partnership, limited partnership,
 26 business trust, corporation, or limited liability company, any certificate of assumed
 27 name filed by a party to a merger or conversion shall remain in full force and effect,

1 as provided in subsection (4) of this section, as if originally filed by the business
2 organization which survives the merger or conversion.

3 (9) A certificate of assumed name may be amended to revise the real name or the
4 address of the person or business organization holding the certificate of assumed
5 name.

6 (10) A certificate of assumed name, or its amendment or cancellation, shall be effective
7 on the date it is filed, as evidenced by the Secretary of State's date and time
8 endorsement on the original document, or at a time specified in the document as its
9 effective time on the date it is filed. The document may specify a delayed effective
10 time and date and, if it does so, the document shall become effective at the time and
11 date specified. If a delayed effective date but no time is specified, the document
12 shall be effective at the close of business on that date. A delayed effective date for a
13 document shall not be later than the ninetieth day after the date it is filed.

14 (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each
15 certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for
16 filing each certificate, amendment, and renewal certificate.

17 ➔Section 72. KRS 382.335 is amended to read as follows:

18 (1) No county clerk shall receive or permit the recording of any instrument by which
19 the title to real estate or personal property, or any interest therein or lien thereon, is
20 conveyed, granted, encumbered, assigned, or otherwise disposed of; nor receive any
21 instrument or permit any instrument, provided by law, to be recorded as evidence of
22 title to real estate~~[-; and shall not receive or permit any instrument, relating to the~~
23 ~~organization or dissolution of a private corporation]~~, unless the instrument has
24 endorsed on it, a printed, typewritten, or stamped statement showing the name and
25 address of the individual who prepared the instrument, and the statement is signed
26 by the individual. The person who prepared the instrument may execute his or her
27 signature by affixing a facsimile of his or her signature on the instrument. This

1 subsection shall not apply to any instrument executed or acknowledged prior to July
2 1, 1962.

3 (2) No county clerk shall receive or permit the recording of any instrument by which
4 the title to real estate or any interest therein is conveyed, granted, assigned, or
5 otherwise disposed of unless the instrument contains the mailing address of the
6 grantee or assignee. This subsection shall not apply to any instrument executed or
7 acknowledged prior to July 1, 1970.

8 (3) This section shall not apply to wills or to statutory liens in favor of the
9 Commonwealth.

10 (4) No county clerk shall receive, or permit the recording of, any instrument by which
11 real estate, or any interest therein, is conveyed, granted, assigned, transferred, or
12 otherwise disposed of unless the instrument complies with the official indexing
13 system of the county. The indexing system shall have been in place for at least
14 twenty-four (24) months prior to July 15, 1994 or shall be implemented for the
15 purpose of allowing computerized searching for the instruments of record of the
16 county clerk. If a county clerk requires a parcel identification number on an
17 instrument before recording, the clerk shall provide a computer terminal, at no
18 charge to the public, for use in finding the parcel identification number. The county
19 clerk may make reasonable rules about the use of the computer terminal, requests
20 for a parcel identification number, or both.

21 (5) The receipt for record and recording of any instrument by the county clerk without
22 compliance with the provisions of this section shall not prevent the record of filing
23 of the instrument from becoming notice as otherwise provided by law, nor impair
24 the admissibility of the record as evidence.

25 ➔Section 73. KRS 386.4426 is amended to read as follows:

26 (1) A foreign business trust may apply for a certificate of authority to transact business
27 in this Commonwealth by delivering an application to the Secretary of State for

1 filing. The application shall set forth:

- 2 (a) The name of the foreign business trust, or if its name is unavailable for use in
- 3 this Commonwealth, a name that satisfies the requirements of KRS 386.382;
- 4 (b) The name of the state or country under whose law it is organized;
- 5 (c) Its date of organization and, if the business trust has a specific date of
- 6 dissolution, the latest date upon which it is to dissolve;
- 7 (d) The street address of the office required to be maintained in the state or other
- 8 jurisdiction of its formation by the laws of that state or jurisdiction or, if not
- 9 so required, of the principal office of the foreign business trust;
- 10 (e) The address of its registered office in this Commonwealth and the name of its
- 11 registered agent at that office;
- 12 (f) The names and usual business addresses of its current trustees; and
- 13 (g) A statement that, as of the date of filing, the foreign business trust validly
- 14 exists as a business trust under the laws of the jurisdiction of its organization.

15 (2) A written statement of the initial registered agent consenting to serve in that
16 capacity shall accompany the application for a certificate of authority.

17 **(3) The Secretary of State shall collect a filing fee of one hundred dollars (\$100) for**
18 **each application for a certificate of authority.**

19 ➔Section 74. KRS 386.4428 is amended to read as follows:

- 20 (1) A foreign business trust authorized to transact business in this Commonwealth shall
- 21 obtain an amended certificate of authority from the Secretary of State if it changes:
- 22 (a) Its name;
- 23 (b) The latest date on which it is to dissolve; or
- 24 (c) The state or country of its organization.

25 (2) The requirements of KRS 386.4426 for obtaining an original certificate of authority
26 shall apply to obtaining an amended certificate under this section.

27 **(3) The Secretary of State shall collect a filing fee of one hundred dollars (\$100) for**

1 **each application for an amended certificate of authority.**

2 ➔ Section 75. KRS 386.4444 is amended to read as follows:

3 The Secretary of State may commence a proceeding under KRS 386.4446 to revoke the
4 certificate of authority of a foreign business trust authorized to transact business in this
5 Commonwealth if:

6 (1) The foreign business trust does not **deliver**~~[file]~~ its annual report to the Secretary of
7 State **on or before its due date**~~[within sixty (60) days after it is due]~~;

8 (2) The foreign business trust is without a registered agent or registered office in this
9 Commonwealth for sixty (60) days or more;

10 (3) The foreign business trust does not inform the Secretary of State under KRS
11 386.4434 and 386.4436 that its registered agent or registered office has changed,
12 that its registered agent has resigned, or that its registered office has been
13 discontinued within sixty (60) days of the change, resignation, or discontinuance;

14 (4) A trustee of the business trust or person organizing the foreign business trust signed
15 a document the trustee or person knew was false in any material respect with intent
16 that the document be delivered to the Secretary of State for filing; or

17 (5) The Secretary of State receives a duly authenticated certificate from the Secretary of
18 State or other official having custody of business trust records in the state or country
19 under whose law the foreign business trust is organized stating that it has been
20 dissolved or disappeared as the result of a merger or other event.

21 ➔ Section 76. KRS 386.466 is amended to read as follows:

22 (1) In this section, "entity" means a corporation, partnership, **limited partnership,**
23 limited liability company, **statutory or business trust,** regulated investment
24 company, real estate investment trust, common trust fund, or any other organization
25 in which a trustee has an interest other than a trust or estate to which KRS 386.468
26 applies.

27 (2) Except as otherwise provided in this section, a trustee shall allocate to income

1 money received from an entity.

2 (3) A trustee shall allocate the following receipts from an entity to principal:

3 (a) Property other than money;

4 (b) Money received in one (1) distribution or a series of related distributions in
5 exchange for part or all of a trust's interest in the entity;

6 (c) Money received in total or partial liquidation of the entity; and

7 (d) Money received from an entity that is a regulated investment company or a
8 real estate investment trust, if the money distributed is a capital gain dividend
9 for federal income tax purposes.

10 (4) Money is received in partial liquidation:

11 (a) To the extent that the entity, at or near the time of a distribution, indicates that
12 it is a distribution in partial liquidation; or

13 (b) If the total amount of money and property received in a distribution or series
14 of related distributions is greater than twenty percent (20%) of the entity's
15 gross assets, as shown by the entity's year end financial statements
16 immediately preceding the initial receipt.

17 (5) Money is not received in partial liquidation, nor may it be taken into account under
18 paragraph (b) of subsection (4) of this section to the extent that it does not exceed
19 the amount of income tax that a trustee or beneficiary shall pay on taxable income
20 of the entity that distributes the money.


21 (6) A trustee may rely upon a statement made by an entity about the source or character
22 of a distribution if the statement is made at or near the time of distribution by the
23 entity's board of directors or other person or group of persons authorized to exercise
24 powers to pay money or transfer property comparable to those of a corporation's
25 board of directors.

26 ➔Section 77. The following KRS section is repealed:

27 275.340 Effect of determination that member or manager lacks authority to sue on

1 behalf of company.

2 ➔Section 78. During the 2010 legislative interim, the Interim Joint Committee on
3 Judiciary shall study the advisability of recognizing and regulating low-profit limited
4 liability companies in Kentucky's statutory law. In conducting its study, the committee
5 may seek the input and advice of the Attorney General, the Secretary of State, the
6 Business Law section of the Kentucky Bar Association, and other agencies, organizations,
7 and persons. The study may identify those states that have authorized low-profit limited
8 liability companies and the regulatory and operational requirements imposed on low-
9 profit limited liability companies in those states, together with an examination of how
10 state provisions on low-profit limited liability companies would interact with federal law.



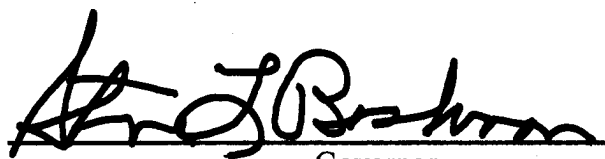
President of Senate



Speaker House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 

April 13, 2010